84-1154

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No. 84-1674
(D. C. No. 83-4388)
(D. Kan.)

IN THE
SUPREME COURT OF THE UNITED STATES
January Term, 1985

JACK P. QUINN,
Petitioner
V.
STATE FARM
MUTUAL AUTOMOBILE INSURANCE COMPANY,
also known as,
STATE FARM INSURANCE COMPANY
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JACK P. QUINN
908 Lincoln
Wamego, Kansas 66547
Pro Se for Plaintiff-Appellant

January, 1985

QUESTION PRESENTED

The question presented is a denial of due process where:

I, Jack P. Quinn, hereby, on December 28, 1983, file a law suit in federal court against State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Missouri-Kansas Office, 2000 I-70 Drive S.S., Columbia, Missouri 65217. I, Jack P. Quinn, am filing this law suit in federal court against State Farm Mutual Automobile Insurance Company on the grounds that on January 4, 1983, a vehicle 1972 Ford pickup driven by a person by the name of Marvin D. Clark insured by State Farm Mutual Automobile Insurance Company went off of Highway 24 and did property damage amounting to $1500.00. I, Jack P. Quinn, am filing this law suit asking for $1500.00 in actual damages and for $15000.00 in punitive damages. I, Jack P. Quinn, also am asking that the State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company have their license to sell insurance in any State in the United States revoked forever and that all present policies presently in force be terminated. I, Jack P. Quinn, request a trial by jury.

/s/ Jack P. Quinn
908 Lincoln
Wamego, Kansas 66547

BEST AVAILABLE COPY

1. Jack P. Quinn did have a hearing on May 3, 1984, at 8:30 a.m., at Room 401, 444 S.E. Quincy, Topeka, Kansas, in United States District Court for the District of Kansas, before the Honorable Richard D. Rogers. The Honorable Richard D. Rogers dismissed the case No. 83-4388, Jack P. Quinn, Plaintiff, versus State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant, because the case is a direct action by plaintiff against a liabilitly insurer in which the insured has not been joined as a defendant. 28 U.S.C. 1332(c) provides that in such case the defendant insurer, for diversity jurisdiction purposes, becomes a citizen of the state where its insured resides. Here, both plaintiff and defendant's insured are residents of the State of Kansas. As a result, complete diversity among the parties does not exist and we must dismiss this action. It is therefore ordered that defendant's motion to dismiss be granted, on the 3rd day of May, 1984, at Topeka, Kansas.

I, Jack P. Quinn, disagree with the Honorable Richard D. Rogers because an out of State insurance company selling insurance in the State of Kansas does not automatically make the company a resident of the State of Kansas to do so would be unconstitutional. The Constitution of the United States of America clearly states in Section 10. Powers Forbidden To The States: *no state law impairing the obligation of contracts*. Marvin D. Clark was insured by State Farm Mutual Automobile Insurance Company, so State Farm Mutual Automobile Insurance Company definiately had a contract with Marvin D. Clark. I, Jack P. Quinn, did not include Marvin D. Clark in the law suit in federal court because Marvin D. Clark was not in default in pay-

ing the damages done to property owned by Jack P. Quinn. Instead State Farm Mutual Automobile Insurance Company delayed senting any payment for over two months when State Farm Mutual Automobile Insurance Company finally did sent a check for $189.09 as full payment for all of the damages done to the property owned by Jack P. Quinn. Jack P. Quinn immediately returned the check for $189.09 back to State Farm Mutual Automobile Insurance Company stating that $189.09 would only pay for about one third of the damages done by a 1972 Ford pickup driven by Marvin D. Clark and insured by State Farm Mutual Automobile Insurance Company. Jack P. Quinn also stated in the letter to the State Farm Mutual Automobile Insurance Company that Jack P. Quinn was giving State Farm Mutual Automobile Insurance Company permission to go on his property and repair all of the damages done by a 1972 Ford pickup driven by Marvin D. Clark and insured by State Farm Mutual Automobile Insurance Company. The State Farm Mutual Automobile Insurance Company refused to repair any of the damages done by a 1972 Ford pickup driven by Marvin D. Clark and insured by State Farm Mutual Automobile Insurance Company.

Here again the Constitution of the United States of America has been violated: Amendment XIV. Rights Of Citizens: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

Jack P. Quinn was denied a trial by jury as requested.

The Constitution of the United States of America clearly states as follows: Section 2. Jurisdiction Of United States Courts: The judicial power shall extend to all cases, in law and equity.

Section 2. Jurisdiction Of United States Courts

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

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IN THE
SUPREME COURT OF THE UNITES STATES
January Term, 1985

No. 84-1674
(D. C. No. 83-4388)
(D. Kan.)

JACK P. QUINN,
Petitioner
V.
STATE FARM
MUTUAL AUTOMOBILE INSURANCE COMPANY,
also known as,
STATE FARM INSURANCE COMPANY
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Jack P. Quinn prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Tenth Circuit entered on May 11, 1984, with appeal to overrule dismissal of the case, Jack P. Quinn, Appellant, versus State Farm Mutual Automobile Insurance Company, also known as, State Farm Insurance Company, Appellee, case No. 84-1674. The case was dismissed by United States District Judge Richard D. Rogers in the United States District Court for the District of Kansas, after a

hearing. The United States District Judge Richard D. Rogers ruled in dismissing the case No. 83-4388, Jack P. Quinn, Plaintiff, versus State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant, is a case of direct action by plaintiff against a liability insurer in which the insured has not been joined as a defendant. 28 U.S.C. 1332(c) provides that in such a case the defendant insurer, for diversity jurisdiction purposes, becomes a citizen of the state where its insured resides. Here, both plaintiff and defendant's insured are residents of the State of Kansas. As a result, complete diversity among the parties does not exist and we must dismiss this action. It is therefore ordered that defendant's motion to dismiss be granted on the 3rd day of May, 1984, at Topeka, Kansas.

Jack P. Quinn filed the law suit in federal court against State Farm Mutual Automobile Insurance Company because they were the insurance carrier for Marvin D. Clark but State Farm Mutual Automobile Insurance Company only offered to pay about one third of what it would cost to repair the total damage done to the property owned by Jack P. Quinn. Marvin D. Clark was insured by State Farm Mutual Automobile Insurance Company but State Farm Mutual Automobile Insurance Company was in default because they refused to pay full costs for repairing the damage done to the property owned by Jack P. Quinn. Jack P. Quinn returned the check of $189.09 back to State Farm Mutual Automobile Insurance Company stating that it would be impossible for Jack P. Quinn to repair all of the damages done to his property by a 1972 Ford pickup driven by Marvin D. Clark and insured by State Farm Mutual Automobile Insurance Company. Jack P. Quinn

gave State Farm Mutual Automobile Insurance Company permission to go on his property and repair all of the damages done by a 1972 Ford pickup driven by Marvin D. Clark and insured by State Farm Mutual Automobile Insurance Company but State Farm Mutual Automobile Insurance Company refused to repair any of the damages. As for diversity State Farm Mutual Automobile Insurance Company sells insurance in about every State in the United States of America.

Jack P. Quinn filed, on May 11, 1984, an appeal to the United States Court of Appeals for the Tenth Circuit. On November 2, 1984, the United States Court of Appeals for the Tenth Circuit, before Holloway, Chief Judge, Logan and Seymour, Circuit Judges, order and judgment for the reasons given by the district court, the judgment of the United States District Court for the District of Kansas is AFFIRMED, filed United States Court of Appeals for the Tenth Circuit, November 2, 1984.

JURISDICTION

Jack P. Quinn is an American citizen of the United States of America and as such is guaranteed all the rights of an American citizen as provided by the Constitution of the United States of America as follows:

Section 2. Jurisdiction Of United States Courts

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

Section 10. Powers Forbidden To The States

No state shall enter into any treaty, alliance, or

confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, *or law impairing the obligation of contracts*, or grant any title of nobility.

ARTICLE IV. RELATION OF THE STATES TO EACH OTHER

Section 1. Official Acts

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Section 2. Privileges Of Citizens

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

AMENDMENT XIV. Rights Of Citizens

Section 1. All persons born or naturalized in the United States, and subject to the jurisidiction thereof, are citizens of the United States and of the State wherein they reside. *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens in the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

AMENDMENT VII. Jury Trial In Civil Cases

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the

common law.

ARTICLE VI. GENERAL PROVISIONS

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

QUESTION PRESENTED

The question presented is a denial of due process where:

I, Jack P. Quinn, hereby, on December 28, 1983, file a law suit in federal court against State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Missouri-Kansas Office, 2000 I-70 Drive S.S., Columbia, Missouri 65217. I, Jack P. Quinn, am filing this law suit in federal court against State Farm Mutual Automobile Insurance Company on the grounds that on January 4, 1983, a vehicle 1972 Ford pickup driven by a person by the name of Marvin D. Clark insured by State Farm Mutual Automobile Insurance Company went off of Highway 24 and did property damage amounting to $1500.00. I, Jack P. Quinn, am filing this law suit asking for $1500.00 in actual damages and for $15000.00 in punitive damages. I, Jack P. Quinn, also am asking that the State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company have their license to sell insurance in any State in the United States revoked forever and that all present policies presently in force be

terminated. I, Jack P. Quinn, request a trial by jury.

/s/ Jack P. Quinn
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I, Jack P. Quinn, disagree with the Honorable Richard D. Rogers because an out of State insurance company selling insurance in the State of Kansas does not automatically make the company a resident of the State of Kansas to do so would be unconstitutional. The Constitution of the United States of America clearly states in Section 10. Powers Forbidden To The States: *no state law impairing the obligation of contracts.* Marvin D. Clark was insured by State Farm Mutual Automobile In-

surance Company, so State Farm Mutual Automobile Insurance Company definiately had a contract with Marvin D. Clark. I, Jack P. Quinn, did not include Marvin D. Clark in the law suit in federal court because Marvin D. Clark was not in default in paying the damages done to property owned by Jack P. Quinn. Instead State Farm Mutual Automobile Insurance Company delayed senting any payment for over two months when State Farm Mutual Automobile Insurance Company finally did sent a check for $189.09 as full payment for all of the damages done to the property owned by Jack P. Quinn. Jack P. Quinn immediately returned the check for $189.09 back to State Farm Mutual Automobile Insurance Company stating that $189.09 would only pay for about one third of the damages done by a 1972 Ford pickup driven by Marvin D. Clark and insured by State Farm Mutual Automobile Insurance Company. Jack P. Quinn also stated in the letter to the State Farm Mutual Automobile Insurance Company that Jack P. Quinn was giving State Farm Mutual Automobile Insurance Company permission to go on his property and repair all of the damages done by a 1972 Ford pickup driven by Marvin D. Clark and insured by State Farm Mutual Automobile Insurance Company. The State Farm Mutual Automobile Insurance Company refused to repair any of the damages done by a 1972 Ford pickup driven by Marvin D. Clark and insured by State Farm Mutual Automobile Insurance Company.

Here again the Constitution of the United States of America has been violated: Amendment XIV. Rights Of Citizens: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

Jack P. Quinn was denied a trial by jury as re-

quested.

The Constitution of the United States of America clearly states as follows: Section 2. Jurisdiction Of United States Courts: The judicial power shall extend to all cases, in law and equity.

STATEMENT

1. For an out of state insurance company to come into the State of Kansas and sell insurance in the State of Kansas and claim to be resident of the State of Kansas is unconstitutional. The Constitution of the United States of America states as follows: Section 10. Powers Forbidden To The States: No State law impairing the obligation of contracts. Amendment XIV. Rights Of Citizens: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

2. The State of Kansas has a State Law that no one can sue an insurance company for punitive damages. That State Law is unconstitutional and should be repealed by the Federal Courts immediately. Again the Constitution of the United States of America has been violated by the State of Kansas. The Constitution of the United States of America states as follows: Section 10. Powers Forbidden To The States: No state law impairing the obligation of contracts. Amendment XIV. Rights Of Citizens: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

3. Jack P. Quinn was denied a trial by jury as requested which is guaranteed by the Constitution of the United States of America as follows:

AMENDMENT VII. Jury Trial In Civil Cases

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

4. The question of jurisdiction of the Federal Courts is clearly defined in the Constitution of the United States of America as follows:

Section 2. Jurisdiction Of United States Courts

The judicial power shall extend to all cases, in law and equity.

5. The jurisdiction and the supreme power of the Constitution of the United States of America are fully explained in the following taken from the Constitution of the United States of America:

ARTICLE VI. General Provisions

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

EVENTS BEFORE THE CASE WAS FILED IN FEDERAL COURT

January 4, 1983, a vehicle 1972 Ford pickup driven by a person by the name of Marvin D. Clark went off of Highway 24 and demolished a stretch of seven wire fence owned by Jack P. Quinn. After Jack P. Quinn found the stretch of seven wire fence that

had been demolished. Jack P. Quinn went to the Pottawatomie County Sheriff's office and got a photo copy of the accident report. The sheriff's report stated in writing that the 1972 Ford pickup driven by Marvin D. Clark was insured by State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company. Jack P. Quinn waited for about 30 days after the accident happened and received no word from State Farm Mutual Automobile Insurance Company. So in February, 1983, Jack P. Quinn drove to Manhattan, Kansas, and went to several State Farm Mutual Automobile Insurance Company agents before Jack P. Quinn found the agent that had sold State Farm Mutual Automobile Insurance to Marvin D. Clark. Jack P. Quinn told the agent for State Farm Mutual Automobile Insurance Company that State Farm Mutual Automobile Insurance Company was responsible for damages done to property owned by Jack P. Quinn. The agent for State Farm Mutual Automobile Insurance Company replied that State Farm Mutual Automobile Insurance Company was not responsible for any damages done to property owned by Jack P. Quinn. Jack P. Quinn showed the agent the photo copy of the Pottawatomie County sheriff's report of the accident that happened January 4, 1983, and that the 1972 Ford pickup was insured by State Farm Mutual Automobile Insurance Company. The agent said that Jack P. Quinn would have to file a written damage claim report which Jack P. Quinn did at the agent's office. Jack P. Quinn waited another 30 days and no reply from State Farm Mutual Automobile Insurance Company so Jack P. Quinn goes back to Manhattan, Kansas, to the agent representing State Farm Mutual Automobile Insurance Company. When Jack P. Quinn told the agent that I

had received no word from State Farm Mutual Automobile Insurance Company, the agent immediately called Topeka, Kansas, by telephone the party in Topeka, Kansas, ask has Jack P. Quinn repaired the damages yet, the agent's reply was no Jack P. Quinn has not repaired the damages yet, so the party in Topeka, Kansas, claimed they had not yet received a written damage claim report. Finally on March 17, 1983, Jack P. Quinn received a check from State Farm Mutual Automobile Insurance Company in the amount of $189.09 as a complete settlement for the damages done to property owned by Jack P. Quinn by a 1972 Ford pickup driven by a person by the name of Marvin D. Clark. Jack P. Quinn immediately returned the check for $189.09 to State Farm Mutual Automobile Insurance Company stating that Jack P. Quinn had filed a claim for $500.00 in damages and not $189.09 in damages. Jack P. Quinn also stated that State Farm Mutual Automobile Insurance Company had Jack P. Quinn's permission to go on the property owned by Jack P. Quinn and repair all of the damages themselves. State Farm Mutual Automobile Insurance Company refused to repair any of the damages done by a 1972 Ford pickup driven by a person by the name of Marvin D. Clark and insured by State Farm Mutual Automobile Insurance Company.

SUMMARY

I, Jack P. Quinn, disagree with the Honorable Richard D. Rogers decision to dismiss the case No. 83-4388, Jack P. Quinn, Plaintiff, versus State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant, be-

cause the case is a direct action by plaintiff against a liability insurer in which the insured has not been joined as a defendant. 28 U.S.C. 1332(c) provides that in such a case the defendant insurer, for diversity jurisdiction purposes, becomes a citizen of the state where its insured resides. Here, both plaintiff and defendant's insured are residents of the State of Kansas. As a result, complete diversity among the parties does not exist and we must dismiss this action. It is therefore ordered that defendant's motion to dismiss be granted, on the 3rd day of May, 1984, at Topeka, Kansas.

1. Jack P. Quinn filed a law suit in federal court against State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company because State Farm Mutual Automobile Insurance Company sent Jack P. Quinn a check in the amount of $189.09 instead of $500.00 as full payment for damages done to property owned by Jack P. Quinn. State Farm Mutual Automobile Insurance Company waited for over two months before they sent Jack P. Quinn the check in the amount of $189.09. Jack P. Quinn has been forced to cancel leases on the property in the amount of several thousands of dollars because State Farm Mutual Automobile Insurance Company has refused to repair the damages done to property owned by Jack P. Quinn.

2. As for diversity, the State Farm Mutual Automobile Insurance Company is not a resident of the State of Kansas and sells insurance in just about every State in the United States of America.

3. As for jurisdiction, the Constitution of the United States of America states as follows: Section 2. Jurisdiction Of United States Courts: The judicial power shall extend to all cases, in law and equity.

The Constitution of the United States clearly states that the federal courts have jurisdiction over all cases in law and equity.

4. The Constitution of the United States of America states as follows: Section 10. Powers Forbidden To The States: No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, *or law impairing the obligation of contracts*, or grant any titles of nobility. The Constitution of the United States of America clearly states that no state can have a law impairing the obligation of contracts. State Farm Mutual Automobile Insurance Company was obligated by contract with Marvin D. Clark to repair the damages done to the property owned by Jack P. Quinn by a 1972 Ford pickup driven by Marvin D. Clark and insured by State Farm Mutual Automobile Insurance Company.

5. The Constitution of the United States of America states as follows: Amendment XIV. Rights Of Citizens: *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.* The Constitution of the United States of America clearly states that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. According to the dictionary the definition for immunities is special privileges, as the immunities of the rich; in law, freedom from any duty, office, or tax. So the State of Kansas can not legally let the State Farm Mutual Automobile Insurance Company claim to be a resident of the State of Kansas to do so is unconstitutional.

6. Jack P. Quinn was denied a trial by jury. The

Constituion of the United States of America states as follows:

AMENDMENT VII. Jury Trial In Civil Cases

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according the rules of the common law.

Here again the Constitution of the United State of America has been violated when Jack P. Quinn was denied a trial by jury as guaranteed by the Constitution of the United States of America.

7. Let us define exactly what an insurance company is and what their responsibility is to their clients. An insurance company as defined by the dictionary is as follows: Insuring a motorist against his legal liability for personal injury, death or property damage arising out of the operation of his or her vehicle. Insurance is coverage by contract whereby for a stipulated consideration one party undertakes to indemnify or guarantee another against loss. This definition of an insurance company clearly states that an insurance company insures a motorist against his legal liability for personal injury, death or property damage arising out of the operation of his or her vehicle and insurance is coverage by contract whereby for a stipulated consideration one party undertakes to idemnify or guarantee another against loss. So this is why Jack P. Quinn did not include Marvin D. Clark in the law suit filed in federal court against State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company because Marvin D. Clark had an insurance contract with State Farm Mutual Automobile Insurance Company. But State Farm Mutual Au-

tomobile Insurance Company was in default and refused to honor their contract with Marvin D. Clark and pay full damages to the damages done to the property owned by Jack P. Quinn by a 1972 Ford pickup driven by Marvin D. Clark and insured by State Farm Mutual Automobile Insurance Company. I, Jack P. Quinn, filed the law suit in federal court not only to stop State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company from selling their insurance policies in the State of Kansas but also stop them from selling their insurance policies in any State in the United States of America. I, Jack P. Quinn, also am asking the federal court to terminate all present policies now in force and their licenses to sell insurance to be revoked forever in the United States of America. We American citizens do not need this kind of a phony insurance company. We American citizens want honesty, fairness, justice and an insurance company that will guarantee to fulfil its contract.

8. Let us define exactly what punitive damages are as defined by the dictionary as follows: Punitive damage is to punish a defendant for a gross wrong. So there is no question but that State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company is guilty of failing to pay for or to repair the property damages done to property owned by Jack P. Quinn. Therefore State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company should be forced to pay punitive damages as well as actual damages.

9. The State of Kansas has a State Law that no one can sue an insurance company for punitive damages. That State Law is unconstitutional and

should be repealed by the federal courts immediately. The Constitution of the United States of America states as follows: Section 10. Powers Forbidden To The States: No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, *or law impairing the obligation of contracts*, or grant any title of nobility. No State can have a law impairing the obligation of contracts. The State Law in the State of Kansas that no one can sue an insurance company for punitive damages is unconstitutional because it does impair the obligation of contracts. The way these unconstitutional laws get passed into law by the legislatures at the state and federal level is very simple big businesses and corporations hire lobbyists to bribe legislaturors to pass these unconstitutional laws. This has been going on since the beginning of this government in the United States of America and should have been stopped a hundred years ago.

10. The following is taken from the brief of the attorney Gregory Whittmore, who is representing State Farm Mutual Automobile Insurance Company to the United States Court of Appeals for the Tenth Circuit, page 2, as follows:

Defendant State Farm then contacted a local fence repairer in the area who determined that the offer made by defendant was fair and subsequently completed a bid for formal repairs (R.O.A. Vol. 1, p. 10) Plaintiff refused to accept this offer. (R.O.A. Vol. 1, p. 7, 10)

The above allegations are totally untrue Gregory Whittmore must be getting totally desperate to

make such totally untrue statements. Jack P. Quinn gave State Farm Mutual Automobile Insurance Company permission to go on his property and repair all of the damages themselves. State Farm Mutual Automobile Insurance Company refused to repair any of the damages. What actually happened after Jack P. Quinn returned the check for $189.09 to State Farm Mutual Automobile Insurance Company was that State Farm Mutual Automobile Insurance Company send Jack P. Quinn a letter saying that a fence contractor said that State Farm Mutual Automobile Insurance Company's offer of $189.09 was a fair offer but did not state that the contractor would repair the damage for $189.09, so Gregory Whittmore had better stick to the true facts of the case. Besides State Farm Mutual Automobile Insurance Company should negotiate with the fence contractor not Jack P. Quinn.

11. Before the State of Kansas became a State of the United States of America, it was a territory of the United States of America. After the State of Kansas was granted state-hood, the State of Kansas is still under the jurisdiction of the government of the United States of America and must abide by the Constitution of the United States of America. The Constitution of the United States of America states as follows:

Article VI. General Provisions

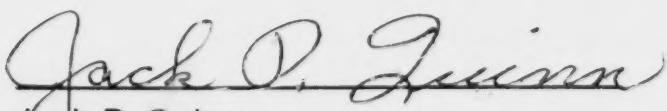
This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

REASONS FOR GRANTING THE WRIT

Jack P. Quinn as an American citizen feels that he has been treated unfair and unjustly because he was denied a trial by jury which is guaranteed by the Constitution of the United States of America. By granting a writ of certiorari to the United States Court of Appeals for the Tenth Circuit, the Supreme Court of the United States of America can review the entire case and the decisions of the judges in the lower federal court.

CONCLUSION

It is respectfully submitted that petition for a writ of certiorari should be granted.



Jack P. Quinn
908 Lincoln
Wamego, Kansas 66547
Pro Se For Plaintiff-Appellant

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Jack P. Quinn, Plaintiff, vs. State Farm Mutual Automobile Insurance Company, also known as State Farm Insurance Company, Defendant. Case No. (none).

I, Jack P. Quinn, hereby, on December 28, 1983, file a law suit in federal court against State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Missouri-Kansas Office, 2000 I-70 Drive S.W., Columbia, Missouri 65217. I, Jack P. Quinn, am filing this law suit in federal court against State Farm Mutual Automobile Insurance Company on the grounds that on January 4, 1983, a vehicle 1972 Ford pickup driven by a person by the name of Marvin D. Clark insured by the State Farm Mutual Automobile Insurance Company went off of Highway 24 and did property damage amounting to $1500.00. I, Jack P. Quinn, am filing this law suit asking for $1500.00 in actual damages and for $15000.00 in punitive damages. I, Jack P. Quinn, also am asking that the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company have their license to sell insurance in any State in the United States revoked forever and that all present policies presently in force be terminated. I, Jack P. Quinn, request a trial by jury.

Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547.

SUMMONS IN A CIVIL ACTION

Jack P. Quinn, Plaintiff, v. State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant.

To: State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Missouri-Kansas Office, 2000 I-70 Drive SW., Columbia, Missouri 65217.

You are hereby summoned and required to serve upon Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547 and file in the office of the clerk, United States District Court, 444 S.E. Quincy, Post Office Box 1697, Topeka, Kansas 66601 an answer to the complaint which is herewith served upon you, within days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Arthur G. Johnson, clerk.

STATE OF KANSAS
DEPARTMENT OF INSURANCE
COMMISSIONER'S PROOF OF SERVICE

Case Number 83-4388, Jack P. Quinn, Vs. State Farm Mutual Automobile Insurance Company, court: United States District Court, District of Kansas, Topeka, Kansas.

1. I, Fletcher Bell, Commissioner of Insurance, do hereby certify that on December 29, 1983 I received the Summons and Complaint in the above captioned case. Service was made as set forth in paragraph 2 or service was not made for the reasons as set forth in paragraph 3.

2. Service was made upon State Farm Mutual Automobile Insurance Company on December 29,

1983, pursuant to K.S.A. 40-218, by depositing the aforementioned documents in the United States mail, postage paid, addressed as follows: Laura Sullivan, Secretary, State Farm Mutual Automobile Insurance Company, One State Farm Plaza, Bloomington, Illinois 61701 (Secretary, Attorney-in-Fact).

4. Disposition: Clerk is to indicate final disposition on green copy and forward same to: Commissioner of Insurance, 420 S.W. 9th, Topeka, Kansas 66612.

In witness whereof, I have hereunto set my hand and affixed my Official Seal at the City of Topeka, this 29th day of December A.D., 1983.

Fletcher Bell, Commissioner of Insurance.

1/25/84, rt, Eugene B. Ralston, Ralston & Frieden, 112 S.W. 6th—Suite 305, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266, Attorneys for Defendant.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Jack P. Quinn, Plaintiff, vs. State Farm Mutual Automobile Insurance Company a/k/a State Farm Insurance Company, Defendant, Case No 83 4388.

Answer: Comes now the defendant in the above-captioned matter and for its Answer to Plaintiff's non-captioned document purporting to be a claim against this defendant, and served upon this defendant by serving the Commissioner of Insurance of the State of Kansas, and alleges and states as follows:

1. That in answer to plaintiff's unnumbered and undivided paragraphs, this defendant denies each and every, all and singularly, the allegations therein contained.

2. This defendant further reserves unto itself the

following defenses:

a. The Court does not have jurisdiction of the parties or subject matter.

b. That the plaintiff has failed to state a claim for which relief may be obtained.

c. That process and service of process are insufficient, improper, invalid and void.

d. That plaintiff has the wrong parties in interest.

e. That the plaintiff has failed to join a proper party pursuant to Rule 19 of the Federal Rules of Civil Procedure.

f. That the plaintiff has violated Rule 10 of the Federal Rules of Civil Procedure by failing to appropriately set out with separate statements all claims for relief.

3. Defendant further alleges that plaintiff has failed to comply with Rule 8 of the Federal Rules of Civil Procedure.

4. This defendant further alleges that plaintiff has failed to comply with Rule 17, in that this defendant is not the real party in interest.

5. This defendant further alleges that plaintiff has abused the process of this court and maliciously filed the action herein.

Wherefore, any by reason of the above and foregoing, this defendant prays that plaintiff take nothing by his alleged cause of action, but that in the alternative this defendant receive judgment, together with his costs and such other and further relief as to the Court seems just and reasonable.

Eugene B. Ralston, Ralston & Frieden, 112 S.W. 6th, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266.

REQUEST FOR TRIAL BY JURY

Comes now the plaintiff in the above-captioned matter and requests a trial by jury.

Eugene B. Ralston, Ralston & Frieden.

DESIGNATION OF PLACE OF TRIAL

Comes now the defendant and respectfully requests that the trial of this action be in the Courtroom of the Federal Building in Topeka, Kansas, within this District.

Eugene B. Ralston, Ralston & Frieden, 112 S.W. 6th, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing ANSWER was placed in the United States mail on the 25th day of January, 1984, addressed to: Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547.

Eugene B. Ralston, Ralston & Frieden.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Jack P. Quinn, Plaintiff, vs. State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant, Case No. 83 4388.

The plaintiff, Jack P. Quinn, claims that all claims made by Jack P. Quinn are valid claims as a photo copy of the Pottawatomie County Kansas sheriff's report will prove.

As for the jurisdiction of the courts, the following is taken from the Constitution of the United States of America: Section 2. Jurisdiction Of United States Courts. The judicial power shall extend to all cases, in law and equity.

The above clearly states that the federal courts have jurisdiction in all cases.

The plaintiff, Jack P. Quinn, has stated a claim with the State Farm Mutual Automobile Insurance

Company also known as the State Farm Insurance Company. I, Jack P. Quinn, soon following the accident stated that the damage done to the property fenceline would cost by my estimate $500.00 to repair. Several months later the State Farm Mutual Automobile also known as the State Farm Insurance Company sent me a check in the amount of $189.09 claiming that according to the estimates that the check would be a sufficient amount to repair all of the damage done to my property by a 1972 Ford pickup truck driven by Marvin D. Clark insured by the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company. I, Jack P. Quinn, returned the check to the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company stating that it would be impossible for me to repair all of the damage done by the 1972 Ford pickup truck driven by Marvin D. Clark on $189.09, but if the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company could repair all of the damage done to my property on $189.09 that they had my permission to go on my property and repair all of the damage done by the 1972 Ford pickup truck driven by Marvin D. Clark. The State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company did not repair the damage done to my property and the results have been a loss of several thousands of dollars to me because of the damage done to my property by a 1972 Ford pickup truck driven by Marvin D. Clark and insured by the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company.

I, Jack P. Quinn, will admit that $1500.00 in actual damages and $15000.00 in punitive damages is by

far not a large enough amount to pay for all of the damages done by a 1972 Ford pickup truck driven by Marvin D. Clark and insured by the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company.

The defendant states that I, Jack P. Quinn, has abused the process of this court. The plain truth is that if the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company had paid the full amount in damages or had taken the option and paid someone else to repair all of the damages done to my property by a 1972 Ford pickup truck driven by Marvin D. Clark in the very beginning this case would not now be in the federal courts.

I, Jack P. Quinn, also am asking that the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company have their license to sell insurance in any state in the United States of America be revoked forever and that all present policies presently in force be terminated. We Americans don't need these kind of insurance companies in the United States of America. We Americans want fairness, honesty, and justice instead of dishonesty, crookedness and corruption.

I, Jack P. Quinn, have requested for a trial by jury which is guaranteed for every American Citizen by the Constitution of the United States of America: Amendment VII. Jury Trial In Civil Cases: In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Dated January 31, 1984.

Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547.

POTTAWATOMIE COUNTY SHERIFF'S REPORT

1-4-83, Tuesday, Pottawatomie County, 24 Hwy., Mile Post 325, arrived 2348, Of: K-99, Wamego, KS.

Donald E. Pittenger, Investigating Officer, Badge No. 3.

Owner's Name: Marvin D. Clark. Owner's Address: 44 Waterway Rd., Manhattan, KS. Driver's Name and Address: same. Year/Make: 72. Model & Type: Ford PU. Vehicle Identification Number: Fi0YKN66824. Birthdate: 6-25-35. Sex: M. Occupation: Truck Driver. Odometer: 86260. License Plate: Kansas R/L7753. Lap Belt: 5. Shoulder Harness: 5. Head Restraint: 5. Ejected: 0. Injury Severity: 2. Vehicle Damage: Front End and Hood. Severity: Functional. Driver's License: Kansas X3C6A1. Restrictions on License: AD. None violated. Time Emergency Medical Service Notified: 23:56PM. Arrived: 05:10. Injured Driver Removed To: Wamego City Hospital. By: 1049. Owner's Liability Insurance Company Name: State Farm. Policy Number: 199-3559D13-16. Vehicle Removal—See Codes On Overleaf: 1. Number of Occupants incl. driver: 1.

Driver Headed: W on 24 Hwy. at Speed: (driver stated "unknown") estimated, legal 55.

Object and Nature of Damage: Jack Quinn, fence & post down.

Road Alignment/Grade: Straight Level. Road Surface: Dry. Road Condition: Normal. Traffic Control: Center line/Edgemark. Weather: Clear. Light Conditions: Dark—No Lights. Debris: Non-Hazardous with Routine Removal. Type of Accident: Fixed Ob-

ject. Driver Action Appeared To: Go Straight, Follow Roadway. Driver Action: Drove Left of Center, Inattention. Vehicle Defects: None Apparent. Visibility: Vision Not Obscured.

Accident Severity: Incapacitating (most severe injury). Most Severe Damage: Functional. Total Number of Vehicles Involved: 1. Total number of people involved: 1. Number of pedestrians/pedalcycles: 0. Total Fatalities: 0. Total injuries: 1. Was the total apparent damage (vehicle and other $300 or greater)? Yes. Investigating Agency: Sheriff. Special Features at Location: None. Roadway Location: Off Roadway. Relation to Junction/Intersection: Nonjunction Accident. Special Information: None. Principle Contributing Circumstances: Human Behavior. Type of Multi-Vehicle Collision: Head-on. Driver/Pedestrian Condition Prior: Alcohol. Alcohol Intake: Unknown if AF. Coordination Test: Not given. Conclusion: Ability to drive/work impaired—head and neck injury.

First to notive accident (lights on) Paul Wagoner, 456-7455, Wamego, KS, R-1. 151 Veh or W (see code on page 3): W.

Assisted in location of 1048 Charles Burgess, R-1, Wamego, KS, 494-2621.

How fast? I don't have any idea. Came from Wamego. How much to drink? 3 or 4 beers. How long left wamego? About 9PM I think. My neck hurts, I'm bleeding am I going to die.

Upon arrival I notified the 1049 ambulance and also 1041 wrecker. Assisted the victim till arrival of 1049. No beer or bottles inside the cab of truck, however several can in the truck bed itself.

Veh located .02 mile off 24 Hwy. in a ditch leading to a large pond with lights on Driver unable to move, sitting up, in passenger seat, with head held back

and bleeding about the forehead and swelling also. Victim had been drinking.

State Farm Mutual Automobile Insurance Company, J. E. Wilkerson, Manager, Missouri-Kansas Office, 2000 I-70 Drive S.W., Columbia, Missouri 65217.

June 1, 1983. Mr. Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547. RE: Our Claim No. 16-3124-357. Our Insured: Marvin Clark. Date of Loss: 1/4/83.

Dear Mr. Quinn: I have had the opportunity to review the claim file pertaining to the accident that resulted in damage to your fence on January 4, 1983.

I discovered that on March 17, 1983 the damage to your property was surveyed by Claimsman Fred Dresie of our Topeka office. Following that inspection, Mr. Dresie forwarded payment to you in the amount of $189.09 with a letter of explanation as to the basis of this offer for settlement.

The above offer was not acceptable to you and you suggested that this company should repair your fence line. Mr. Dresie then contacted a fence repairer in your general area, A & D Fence Company located in Waterville, Kansas. He described the damage to your fence to the owner John Sump and Mr. Sump stated that Fred's offer of settlement appeared fair.

When it became apparent that you still found our offer for settlement unacceptable, Fred Dresie contacted John Sump again and requested that Mr. Sump complete a formal bid for repairs. This bid was completed and a copy was forwarded to you by Fred Dresie along with a draft in the amount of Mr. Sump's estimate for repairs.

It does appear that our claims department was somewhat tardy in contacting you in that we did not

order a sheriff's report to determine the owner of the damaged fence. However, it does seem that once your identity was established, a fair offer was forwarded to you. We stand ready to complete this payment at your convenience.

Thank you for bringing this situation to my attention.

Very truly yours, J. E. Wilkerson, JEW/ibg, cc: E. B. Rust.

Law offices of Ralston & Frieden, 112 S.W. 6th, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266.

March 9, 1984. Certified Mail. Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547. RE: Quinn v. State Farm.

Dear Mr. Quinn: I would hope that there would be some way to resolve this matter short of continuing on as it seems to be doing. Therefore, on behalf of State Farm, I extend you an offer of $300.00 for complete and final settlement and release. Please advise as soon as practically possible.

Sincerely yours, Eugene B. Ralston, Ralston & Frieden. EBR: rkt.

March 14, 1984. To the Law Offices of Ralston & Frieden: This letter is in reply to the letter I received on March 12, 1984, from the law offices of Ralston & Frieden pertaining to the case No. 83 4388 now in Federal Court: Jack P. Quinn, Plaintiff, Vs. State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant.

My answer is "no deal". This case will and should

be settled in the Federal Courts with a trial by jury as guaranteed by the Constitution of the United States of America.

Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547.

3/20/84. dg. Gregory A. Whittmore. Ralston & Frieden, 112 S.W. 6th, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266, Attorneys for Defendants.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Jack P. Quinn, Plaintiff, vs. State Farm Mutual Automobile Insurance Company, Defendant. Civil Action No. 83-4388.

MOTION TO DISMISS

Comes now the defendant, State Farm Mutual Automobile Insurance Company, and hereby moves the Court to dismiss plaintiff's compiaint with prejudice. In support of its motion, defendant shows the Court that:

1. There is no diversity of citizenship under 28 U.S.C. § 1332(a) & (c).

2. The amount in controversy does not exceed Ten Thousand Dollars ($10,000.00).

3. Plaintiff has failed to join an indispensible party to this action.

4. This Court lacks subject matter jurisdiction.

Wherefore, defendant State Farm Mutual Automobile Insurance Company respectfully prays the Court to grant its Motion to Dismiss and to issue an order dismissing plaintiff's action with prejudice. This motion is accompanied by a memorandum in support.

Gregory A. Whittmore, Ralston & Frieden, 112 S.W. 6th, P.O. Box 639, Topeka, Kansas 66601, (913)

232-7266.

REQUEST FOR ORAL ARGUMENT

Comes now the defendant and hereby requests oral argument on its Motion to Dismiss.

Gregory A. Whittmore, Ralston & Frieden, 112 S.W. 6th, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing MOTION TO DISMISS and REQUEST FOR ORAL ARGUMENT was placed in the United States mail on the 20th day of March, 1984, addressed to: Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547.

Gregory A. Whittmore, Ralston & Frieden.

3/20/84. dg. Gregory A. Whittmore, Ralston & Frieden, 112 S.W. 6th, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266, Attorneys for Defendants.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Jack P. Quinn, Plaintiff, vs. State Farm Mutual Automobile Insurance Company, Defendant. Civil Action No. 83-438.

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS

INTRODUCTION: Plaintiff has filed this action claiming One Thousand Five Hundred Dollars ($1,500.00) actual damages and Fifteen Thousand Dollars ($15,000.00) punitive damages over a claim worth perhaps One Hundred Ninety Dollars ($190.00) to Five Hundred Dollars ($500.00). Plaintiff's fenceline was allegedly damaged by a pickup truck driven by Marvin D. Clark, a State Farm insured. Defendant State Farm offered to settle the claim for One Hundred Eighty-Nine Dollars and

Nine Cents ($189.09). Plaintiff estimated the damage to his fenceline at Five Hundred Dollars ($500.00). Plaintiff refused defendant's offer and filed suit in federal court. Marvin D. Clark, driver of the truck and the State Farm insured, was not joined as a party.

I. LACK OF DIVERSITY JURISDICTION

1. 28 U.S.C. § 1332(c). Diversity of citizenship is lacking because of 28 U.S.C. § 1332(c). Plaintiff is a Kansas resident. Defendant's insured, Marvin D. Clark, is also a Kansas resident. Plaintiff brought a direct action against the defendant and did not join the insured. 28 U.S.C. § 1332(c) establishes the citizenship of an insurance company when sued in a direct action where the insured is not joined as a party. Under 28 U.S.C. § 1332(c), defendant State Farm becomes a citizen of the state where its insured resides, Kansas. There is no diversity of citizenship as required by 28 U.S.C. § 1332(a).

2. Amount in Controversy. The amount in controversy does not exceed Ten Thousand Dollars ($10,000.00) as required by 28 U.S.C. § 1332(a). Plaintiff claims One Thousand Five Hundred Dollars ($1,500.00) actual damages and Fifteen Thousand Dollars ($15,000.00) punitive damages. However, the punitive damage claim can not be considered in determining whether plaintiff has satisfied the Ten Thousand Dollar (10,000.00) jurisdictional amount. To justify an award of punitive damages against defendant, plaintiff must show that defendant's conduct was malicious, vindictive, oppressive, fraudlent or willful and wanton disregard of the other's rights. *Modern Air Conditioning, Inc. v. Cinderella Homes, Inc.*, 226 Kan. 70, 596 P.2d 816 (1979). Plaintiff has failed to allege any conduct by this defendant which would justify an award of punitive damages. Therefore, his Fifteen Thousand Dollar

($15,000.00) punitive damages claim cannot be used to satisfy the Ten Thousand Dollar ($10,000.00) jurisdictional amount. *See Kahal v. J. W. Wilson & Associates, Inc.*, 673 F.2d 547 (D.C. Cir. 1982). Plaintiff's claim for actual damages is only One Thousand Five Hundred Dollars ($1,500.00) and does not satisfy the Ten Thousand Dollar ($10,000.00) jurisdictional amount of 28 U.S.C. § 1332.

Plaintiff's action must be dismissed for lack of diversity of citizenship and for failure to satisfy the Ten Thousand Dollar ($10,000.00) jurisdictional amount.

II. FAILURE TO JOIN AN INDISPENSABLE PARTY. Plaintiff claims that his property was damaged when a pickup truck driven by defendant's insured Marvin D. Clark, crashed through his barbed wire fence. Plaintiff filed suit against defendant for actual and punitive damages but failed to join Marvin D. Clark. Defendant states that Marvin D. Clark is an indispensable party under F.R.C.P., Rule 19(b), who cannot be made a party without destroying diversity jurisdiction and the plaintiff's action should be dismissed.

Plaintiff's claim for One Thousand Five Hundred Dollars ($1,500.00) actual damages and Fifteen Thousand Dollars ($15,000.00) punitive damages appear to be based on the alleged negligence of defendant's insured, Marvin D. Clark. Defendant is not directly liable for the alleged acts and omissions of Marvin D. Clark. Although defendant could conceivably be held liable for the actual damages to plaintiff's property if insurance coverage does not exist, defendant cannot be liable for punitive damages for Marvin D. Clark's alleged acts and omissions. In Kansas, public policy prohibits an insurer from insuring against and paying a punitive damage award against its insured. *American Sur. Co. of New York*

v. Gold, 375 F.2d 523 (10th Cir. 1966). Additionally, defendant is not obligated to defend its insured against a claim that is not covered by its policy. *U.S. Fidelity & Guaranty Co. v. Continental Ins. Co.*, 216 Kan. 5, 8, 531 P.2d 9 (1975). As a result, Marvin D. Clark has a substantial interest in this action and is so situated that his absence as a practical matter impairs and prejudices Clark's ability to protect himself against a punitive damage award. Absent dismissal of the punitive damage claim, little can be done to shape the plaintiff's requested relief in a manner that would protect Marvin D. Clark. An adequate remedy is available if the action is dismissed for nonjoinder. Plaintiff can simply refile his action in state court. Therefore, plaintiff's action should be dismissed for nonjoinder of an indispenable party.

III. LACK OF SUBJECT MATTER JURISDICTION. Plaintiff has also requested the court to revoke defendant's license to sell insurance in Kansas and to terminate all policies presently in force. Defendant states that this court lacks subject matter jurisdiction to grant the relief requested by the plaintiff. The licensure and regulation of insurance companies is a matter reserved to the states by the Tenth Amendment to the United States Constitution. Licensure and regulation of insurance companies in Kansas is controlled by the Commissioner of Insurance pursuant to the Kansas Insurance Code, K.S.A. 40-101 *et seq.* The power to revoke defendant's license to sell insurance in Kansas does not rest with this court. That power is administrative and rests with the Commissioner of Insurance of the State of Kansas. Plaintiff's action must be dismissed for lack of subject matter jurisdiction.

CONCLUSION. Plaintiff's action does not belong in federal court. There is no diversity of citizenship.

The Ten Thousand Dollar ($10,000.00) jurisdictional amount is not satisfied. This court lacks subject matter jurisdiction. Plaintiff's action must be dismissed.

Wherefore, defendant State Farm Mutual Automobile Insurance Company respectfully prays the court to grant its Motion to Dismiss and to issue an order dismissing plaintiff's complaint with prejudice.

Gregory A. Whittmore, Ralston & Frieden, 112 S.W. 6th, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing MEMORANDUM IN SUPPORT OF MOTION TO DISMISS was placed in the United States mail on the 20th day of March, 1984, addressed to: Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547.

Gregory A. Whittmore, Ralston & Frieden.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Jack P. Quinn, Plaintiff, vs. State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant. Case No. 83-4388.

This is in answer to the charges or allegations made in a letter to me, Jack P. Quinn, from the attorneys, Ralston and Frieden, who represent the State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company.

Jack P. Quinn never did state that there was any diversity of citizenship. Jack P. Quinn is a citizen of the United States of America and to the best of my knowledge the State Farm Mutual Automobile Insurance Company also known as State Farm Insur-

ance Company is owned and operated by American citizens. The State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company were the insurance carrier for the 1972 Ford pickup truck driven by a person by the name of Marvin D. Clark that damaged the property on the South side of Highway 24 in other words the the 1972 Ford pickup truck was insured by the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company. It is also known that the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company sells and operates their insurance company in several States in the United States of America therefore I, Jack P. Quinn, have filed this law-suit in Federal Court not only to stop the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company from selling their insurance policies in the State of Kansas but also to stop them from selling their insurance policies in any State in the United States of America. I, Jack P. Quinn, also am asking the Federal Court to terminate all present policies now in force that are issued by the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company and that their licenses to sell insurance be revoked forever in the United States of America. We American citizens do not need this kind of a phony insurance company. Instead we American citizens want honesty, fairness, justice and an insurance company that will guarantee to fulfill its contract with its clients.

So I, Jack P. Quinn, am not suing Marvin D. Clark for property damages instead I, Jack P. Quinn, am suing Marvin D. Clark's insurance carrier for $1500.00 in actual damages to the property and the fenceline along the South side of Highway 24 and

$15000.00 in punitive damages. I, Jack P. Quinn, have requested a trial by jury which is guaranteed by the Constitution of the United States of America as foliows: Amendment VII. Jury Trail In Civil Cases. In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rule of the common law.

The attorneys, Ralston and Frieden, that represent the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company questioned the jurisdiction of this case in Federal Court. The Constitution of the United States of America states as follows: Section 2. Jurisdiction Of United States Courts. The judicial power shall extend to all cases, in law and equity The Federal Courts have jurisdiction in all cases in the United States of America.

Now I, Jack P. Quinn, will define for the attorneys, Ralston and Frieden, that represent the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company exactly what an insurance company is and what their responsibility is to their clients. An insurance company as defined by a dictionary is as follows: Insuring a motorist against his legal liability for personal injury, death or property damage arising out of the operation of his or her vehicle. Insurance is coverage by contract whereby for a stipulated consideration one party undertakes to indemnify or guarantee another against loss.

Now I, Jack P. Quinn, will define for the attorneys, Ralston and Frieden, that represent the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company

exactly what punitive damages are as defined by a dictionary are as follows: Punitive damage is to punish a defendant for a gross wrong.

So there is no question but that the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company is guilty of both charges of failing to pay for or to repair the property damage done to Jack P. Quinn and by their false allegations and statements makes them guilty of doing punitive damage willfully.

The amount in question is irrelevant because the Constitution of the United States of America clearly states that a trial by jury shall be preserved when the value in controversy shall exceed twenty dollars.

The Constitution of the United States of America states as follows: Article VI. General Provisions. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every states shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.'

Now let us review this case and get the facts straight on January 4, 1983, a 1972 Ford pickup truck driven by a person by the name of Marvin D. Clark went out of control and went off of Highway 24 and completely demolished a section of a seven wire fence along the South side of Highway 24 that belonged to Jack P. Quinn. The Pottawatomie County sheriff's report clearly states that the 1972 Ford pickup truck was insured by the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company. I, Jack P. Quinn, filed a damage claim with the State Farm Mutual Automobile Insurance Company also known

as the State Farm Insurance Company with one of their agents in Manhattan, Kansas. On March 17, 1983, I, Jack P. Quinn, received a check in the mail in the amount of $189.09 as full payment for the damage done to the property and the fenceline along with South side of Highway 24 from the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company. I, Jack P. Quinn, in the claim I filed stated that it would take at least $500.00 to repair the damage done to the property and to the fenceline along the South side of Highway 24 and not $189.09. So I, Jack P. Quinn, returned the check amounting to $189.09 back to the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company giving them my permission for them to go on the property and repair the property damage and to fully repair the damage done to the fenceline along the South side of Highway 24 but the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company refused to repair any of the damages.

Now for the actual damages Jack P. Quinn has ask for $1500.00 in actual damages but the actual damages far exceed $1500.00 by several thousands of dollars because of the damages done to the property and to the fenceline along the South side of Highway 24 most of this damage and lost revenue could have been avoided if the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company had honored their insurance contract with Marvin D. Clark and had paid for the damages done to the property and the damage done to the fenceline along the South side of Highway 24. Instead the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company has refused to pay a fair

estimate of the cost to repair the damages done to the property and the damages done to the fenceline along the South side of Highway 24 or they could have taken their option and repaired the damages done to the property and the damages done to the fenceline along the South side of Highway 24 themselves. As a result of the negligence and the default on the part of the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company in not honoring their insurance contract with Marvin D. Clark and not paying for the damages done to the property and the damages done to the fenceline along the South side of Highway 24. Jack P. Quinn has been forced to cancel contracts to bring cattle in on the property on the South side of Highway 24 because of the damages done to the property and the damages done to the fenceline along the South side of Highway 24.

The attorneys, Ralston and Frieden, who are representing the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company claim that Jack P. Quinn did not file suit in Federal Court against Marvin D. Clark. This is true that Jack P. Quinn did not file suit in Federal Court against Marvin D. Clark. But it is also true that the Pottawatomie County sheriff's report clearly states that the 1972 Ford pickup truck being driven by a person by the name of Marvin D. Clark that went out of control and went off of Highway 24 and completely demolished a section of seven wire fence owned by Jack P. Quinn was insured by the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company. Marvin D. Clark had a paid insurance contract with the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company so Marvin D. Clark is not in default. The State

Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company is the one that is guilty of default, defraud, negligence and breach of contract. Even the President of the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company in a letter to Jack P. Quinn admitted that the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company was guilty of being tardy and that their employees should have gotten a copy of the Pottawatomie County sheriff's report of the accident. So I, Jack P. Quinn, ask that the Federal Courts revoke the licenses of the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company to sell any insurance policies in any State in the United States of America forever and that all policies now in force be terminated forever. We the American citizens do not need this kind of a phony insurance company. Instead we the American citizens want an insurance company that is honest, fair and are willing to honor their insurance contracts.

As for the attorneys, Ralston and Frieden, who represent the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company filing a motion in Federal Court to have the case No. 83-4388, Jack P. Quinn, Plaintiff versus the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company, Defendant, dismissed from the United States District Court for the district of Kansas. Ralston and Frieden have no valid claims to grant dismissal. Jack P. Quinn has tried for almost a year to privately negotiate a settlement with the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company

but the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company has completely refused to reach a fair settlement. So Jack P. Quinn gave the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company permission to go on the property along the South side of Highway 24 and repair all of the damages done to the property and to the fenceline along the South side of Highway 24 but the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company has refused to repair any of the damages done by a 1972 Ford pickup truck driven by a person by the name of Marvin D. Clark that was insured by the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company.

Dated April 2, 1984. Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547.

Law offices of Ralston & Frieden, 112 S.W. 6th, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266, April 3, 1984.

The Honorable Richard D. Rogers, United States District Judge, United States Courthouse, 444 S.E. Quincy, Topeka, Kansas 66683. Re: Quinn v. State Farm Mutual Auto. Ins. Co. U.S.D.C. (Kansas) Civil Action No. 83-4388.

Dear Judge Rogers: On March 20, 1984, the enclosed Motion to Dismiss and its supporting memorandum were filed with the Clerk of the Court and a copy was mailed to Mr. Quinn. Under Local Rule 15(b), Mr. Quinn was required to file a response in ten (10) days. The ten day response time has expired. A telephone call to the Clerk of the Court reveals that Mr. Quinn has not filed a reply to the mo-

tion. Therefore, defendant State Farm Mutual Auto. Ins. Co. respectfully requests the Court to deem the Motion to dismiss submitted without opposition and further requests the Court to grant defendant's Motion to Dismiss.

Thank you for your attention to this matter.

Sincerely, Gregory A. Whittmore, Ralston & Frieden. GAW:prm. Enclosure. cc: Jack Quinn.

NOTICE OF HEARING
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Jack P. Quinn v. State Farm Mutual Automobile Insurance Company, No. 83-4388.

Take notice that the above-entitled case has been set for Heating at 8:30 a.m., on May 3, 1984, at Room 401, 444 S.E. Quincy, Topeka, Kansas before the Honorable Richard D. Rogers.

Date April 10, 1984. Arthur G. Johnson, clerk. By Cindy C. Johnson, Deputy Clerk. To Jack P. Quinn, Eugene B. Ralston, Clerk. U.S. District Court. All pending motions.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Filed May 3, 1984, Arthur G. Johnson, Clerk. By Debra Mabey, Deputy.

Jack P. Quinn, Plaintiff, vs. State Farm Mutual Automobile Insurance Company, Defendant. Case No. 83-4388.

ORDER. Plaintiff, proceeding *pro se*, brings this action for damages against the defendant, State Farm Mutual Automobile Insurance Company, for harm done to his property by defendant's insured, Marvin D. Clark. This matter is presently before the

court upon defendant's motion to dismiss. The court has heard oral argument and is now prepared to rule.

In the instant motion, defendant presents four reasons why this action should be dismissed. We find it unnecessary to proceed beyond defendant's first contention. Defendant argues that subject matter jurisdiction is lacking here because diversity among the parties is not present pursuant to 28 U.S.C. § 1332(c). We must agree.

It is readily apparent from reading plaintiff's pleadings in this case that he fails to understand the judicial system of our nation. Plaintiff is unaware of the fundamental principle that federal courts are courts of limited jurisdiction. Federal courts are empowered to hear only those cases (1) that are within the judicial power of the United States, as defined by the Constitution, and (2) that have been entrusted to them by a jurisdictional grant by the Congress. Generally, either "federal question" jurisdiction or "diversity of citizenship" jurisdiction must exist before a federal court can exercise jurisdiction. Since no federal question jurisdiction is stated by plaintiff's complaint, diversity of citizenship jurisdiction must exist if this court is to proceed with this action.

As the pleadings before the court indicate, this case is a direct action by plaintiff against a liability insurer in which the insured has not been joined as a defendant. 28 U.S.C. § 1332(c) provides that in such a case the defendant insurer, for diversity jurisdiction purposes, becomes a citizen of the state where its insured resides. Here, both plaintiff and defendant's insured are residents of the State of Kansas. As a result, complete diversity among the parties does not exist and we must dismiss this action.

It is therefore ordered that defendant's motion to dismiss be granted.

Dated this 3rd day of May, 1984, at Topeka, Kansas.

Richard D. Rogers, United States District Judge.

JUDGMENT IN A CIVIL CASE
UNITED STATES DISTRICT COURT
DISTRICT: KANSAS

Jack P. Quinn, Plaintiff, v. State Farm Mutual Automobile Insurance Company, Defendant. Docket Number 83-4388. Name of Judge: Richard D. Rogers.

Decision by Court. This action came before the Court with the judge named above presiding and a decision has been rendered.

It is ordered and adjudged that the defendant's motion to dismiss be and is hereby granted.

Arthur G. Johnson, Clerk. By Debra A. Mabey, Deputy Clerk. 5/3/84.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Jack P. Quinn, Plaintiff, vs. State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant. Case No. 83-4388 Filed May 11, 1984 Arthur G. Johnson, Clerk By Deputy.

I, Jack P. Quinn, hereby on May 11, 1984, file an appeal in the United States District Court for the District of Kansas appealing the court's judgment on the dismissal of the case Docket Number 83-4388, Jack P. Quinn, Plaintiff, versus the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company,

Defendant, to the United States Court of Appeals for the Tenth Circuit.

I, Jack P. Quinn, ask in my appeal to the United States Court of Appeals for the Tenth Circuit that the decision of the United States District Judge Richard D. Rogers to dismiss the case Docket Number 83-4388, Jack P. Quinn, Plaintiff, versus the State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company be reversed and that a trial by jury as requested by Jack P. Quinn be allowed to proceed as filed in the United State District Court for the District of Kansas.

Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547.

NOTICE OF TRANSCRIPT ORDER

Case caption: Jack P. Quinn, Appellant versus State Farm Mutual Automobile Insurance Company, Appellee. Civil No. 83-4388. District of Kansas. Name of attorney: Jack P. Quinn, Pro Se. Name of law firm: 908 Lincoln. Address of law firm: Wamego, Kansas 66547. Telephone of law firm: None. Name of court reporter: Debbie Scott.

I, Jack P. Quinn, request a complete transcript of the hearing held at 8:30 a.m., on May 3, 1984, at Room 401, 444 S.E. Quincy, Topeka, Kansas before the Honorable Richard D. Rogers. Filed May 17, 1984 Arthur G. Johnson, Clerk By Deputy.

Appellant will make payment for the cost of the transcript through private funds. Note: The court reporter must file the original transcript in the United States District Court. If counsel is ordering copies for private use, state the number of copies desired and the delivery address: Number of copies one; Address: Jack P. Quinn, 908 Lincoln, Wamego, Kansas

66547.

Certificate of Compliance. The attorney/appellant hereby certifies that copies of this Notice of Transcript Order have been served upon the court reporter, the clerk of the U.S. District Court, all counsel of record, or pro se appellee, and the U.S. Court of Appeals for the Tenth Circuit. I further certify that satisfactory arrangements for payment of any cost of transcripts ordered have been made with the court reporter. Signature of Attorney: Jack P. Quinn. Date: May 14, 1984.

Part III—to be completed by the court reporter. When completed, please file one copy in the U.S. Court of Appeals for the Tenth Circuit and one copy in the U.S. District Court. Date order received: 5-17-84. Estimated completion date: 6-1-84. Estimated number of pages: 8-10. The court reporter certifies that satisfactory arrangements for payment of any cost of transcripts ordered have been made. Signature of Court Reporter: (not readable). Date: 5-17-84.

STATEMENT

Debra L. Scott, Federal Court Reporter, 444 S.E. Quincy, Box 61, Topeka, Kansas 66683, (913) 295-2735, No. 6-A.

Date: May 23, 1984. Mr. Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547.

RE: Quinn -vs- State Farm Case No. 83-4388. Original of the Transcript of Proceedings held on May 3, 1984, in the United States District Court, for the District of Kansas—$22.00.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS AT TOPEKA

Jack P. Quinn, Plaintiff, vs. State Farm Mutual Automobile Insurance Company, Defendant. Case No.

83-4388.

TRANSCRIPT OF PROCEEDINGS

Held on May 3, 1984, before the Honorable Richard D. Rogers, United States District Court Judge for the District of Kansas, Topeka, Shawnee County, Kansas, beginning at 8:30 A.M. before Debra L. Scott, Certified Shorthand Reporter.

Appearances—For the Plaintiff: (appeared pro se); For the Defendant: Mr. Gregory Whittmore, Ralston & Frieden, 112 S.W. 6th, Topeka, Kansas 66683.

PROCEEDINGS

The Court: All right, we have the case of Quinn versus State Farm Mutual Automobile Insurance Company. This arises on Defendant's motion to dismiss. Let me find out here, are you Mr. Quinn?

Mr. Quinn: Yes, sir, that is correct.

The Court: You are appearing pro se for yourself?

Mr. Quinn: That's correct, Your Honor.

The Court: Well, and you are Gregory Whittmore?

Mr. Whittmore: Yes, sir.

The Court: Let's hear your argument first. We will see what Mr. Quinn wants to say. It is your motion.

Mr. Whittmore: Thank you, Your Honor. May it please the Court, this matter arises from an automobile accident where a truck went through a fence belonging to Mr. Quinn. The damage was evaluated at about $189.00 according to State Farm's estimates. There was some disagreement on Mr. Quinn's part. State Farm attempted to settle the matter; Mr. Quinn rejected the settlement and subsequently filed suit in this court asking for actual and punitive damages. We filed a motion to dismiss on four counts: Number one, that there is no diversity of citizenship. Number two, the amount in controversy does not exceed $10,000.00; that Mr. Quinn has failed to join an indispensable party in that he did not join the State Farm insured in this matter, Marvin D.

Clark; and also that this Court lacks subject matter jurisdiction in that Mr. Quinn has requested this Court to terminate the license of State Farm to do business in the State of Kansas and to terminate auto insurance policies which are currently in effect.

I filed a memorandum in support of this motion which sets forth the basic statutory and legal authority. Mr. Quinn is a Kansas resident under 28 U.S.C. 1332. Because this is a direct action against State Farm, they become citizens of the state of their insured. Mr. Clark is a Kansas resident; therefore, we don't have the diversity of citizenship necessary to maintain an action in this court. There is no federal question involved.

As to the amount in controversy, Mr. Quinn has claimed $1500.00 in actual damages, $15,000.00 punitive damages. State Farm submits that the punitive damage claim cannot be considered in determining whether or not he sustained jurisdictional amount.

Mr. Quinn has failed to plead the necessary requirements to make the necessary allegations which would justify an award of punitive damages. Additionally, it is unclear from the pleading at this time whether that claim for punitive damages goes to what Mr. Clark may have done in driving through the fence or what Mr. Quinn thinks State Farm may have done. Thirdly, we content that he has failed to join an indispensable party, that Mr. Clark is the insured in this matter. He should have been made a party. State Farm is not directly liable for any of Mr. Clark's acts. We only become liable in the event there is insurance coverage; and in the event that the punitive damage claim does go to the acts of Mr. Clark, there would be no coverage under his policy, under the express terms of the policy, and

also under Kansas law which prohibits insurers from insuring against the punitive damage award. As a result, Mr. Clark has a very substantial interest in this matter, which may be impaired by the fact that he is not a party to this action. Adding him as a party to this action will destroy diversity, assuming we had it in the first place. It would destroy diversity. Therefore, the action should be dismissed because this court simply cannot fashion the requested remedy without his presence.

Finally, as to the lack of subject matter jurisdiction, as I stated before, Mr. Quinn has asked this Court to revoke State Farm's license to do business in Kansas and terminate all its insurance policies. State Farm respectfully submits this Court lacks the subject matter jurisdiction to grant that relief. Regulation and license of the insurance companies is a matter that has been left to the states. It is specifically covered in Kansas under the Kansas Insurance Code, and that is subject to the control of the Commissioner of Insurance. He is the one who has the power to revoke State Farm's license in this state and tell them how to do their business. It is an administrative power that doesn't rest with this Court.

In looking over Mr. Quinn's response to my motion, I find he has admitted that he never pled diversity jurisdiction. He admits that he didn't join Mr. Clark. His sole contention seems to be that the Seventh Amendment guarantees him a right to jury trial in cases in excess of $20.00. That may be true, but the Seventh Amendment is limited in scope by what is contained in Article Three of the Constitution, which provides the grant of jurisdiction to this Court, as the Court is well aware. Congress has not seen fit to vest the federal courts with all the jurisdiction that it could. It has limited that jurisdic-

tion, and those limitations on the jurisdiction of this Court are what bar this action.

Based on the memorandum we have submitted, we would respectfully ask the Court to dismiss this action as it is not properly before this Court. I believe there are other forms of remedy that Mr. Quinn can pursue if he chooses to. Therefore, State Farm respectfully requests the Court to grant its motion to dismiss.

The Court: All right.

Mr. Whittmore: Thank you, Your Honor.

The Court: Mr. Quinn, you want to say something about this matter?

Mr. Quinn: Yes, sir, I do, Your Honor. Again this case is all about—on January 4, 1983 a 1972 pickup truck driven by a person by the name of Marvin D. Clark was headed west from Wamego, Kansas to Manhattan, crossed the highway out of control, went south of the highway and wiped out and completely demolished a large section of my fence, seven-wire fence, did a lot of property damage. This is January 4, 1983.

Now, I have here with me a copy of the Sheriff's report, investigation of the accident. Now, it says right here that the truck owner and driver was insured by State Farm Insurance, which is also State Farm Mutual Automobile Insurance Company. Now, as far as difference in (sic) citizenship, I never did question that. This is an American Court. This is a federal court. I am a tax payer; he is a tax payer. That is irrelevant.

As far as jurisdiction is concerned, says right here in the Constitution of the United States that the federal court has jurisdiction in all cases. That specifically says that.

So far as trial by jury is concerned, which I have requested, it says that trial by jury shall be pre-

served; and that when it exceeds—controversy exceeds an amount of $20.00, that trial by jury is guaranteed, or that is not exactly the same words but amounts to the same effect.

The question is why am I here? The answer is because State Farm has never agreed to a fair settlement, that is why. They seem to think that a person can destroy your fence and property, and you just may wave a magic wand and everything is repaired. You can't do that. It takes time, expense, and a lot of work. They failed. They have been default of this. I tried to negotiate a settlement with them; they refused. This is why I am here.

He says as far as Kansas is concerned, barring them from selling insurance in Kansas, I am not barring them from selling insurance anywhere. We don't need these kinds of insurance companies. They should meet their commitments to their clients. He was insured—Clark. He is not in default. It is the State Farm Insurance Company that is in default, State Farm Mutual. That is why they should —if they would have met their obligations and been agreeable and tried to negotiate a legal and fair settlement, I wouldn't be here. They never did that. They just seemed to think that well, we will offer you so much—let me use an example.

Say a person has a parked car. Somebody comes and smashes into that car, and that is a thousand dollars worth of damages. The insurance company says, well, yeah, we were the carriers on this particular guy that run into you. You say you got a thousand dollars worth of damages and we will give you $200.00 and fix it up—you fix it up. Why, you can't do it for that. It is going to take a thousand dollars to fix it.

They said they offered me $189.09. That's right. I sent that back to them. I said, Okay, I can't repair the fence for that—or the damage to the property. If

you can repair the fence and the damages, go ahead and do it. You have my permission. That was a long time ago. They never did a thing. They don't intend to. That is what I am getting at. We don't need those kinds of insurance companies. They should meet their obligations, commitments to their clients. They never did that. They have been in default.

The Court: All right, gentlemen. The Court will take this matter under advisement. We will put out an order very quickly on it. Let's recess the Court.

State of Kansas, County of Shawnee, SS.

CERTIFICATE

I, Debra L. Scott, Certified Shorthand Reporter within said State, do hereby certify that I was present at and reported in machine shorthand the proceedings had on the 3rd day of May, 1984, in the aforesaid Court.

I further certify that the foregoing transcript is a true, correct, and complete transcript of the requested proceedings. I further certify that I am not related to counsel or any of the parties in this action, or otherwise interested in the proceedings.

In testimony whereof, I have hereunto set my hand and official seal this ____ day of May, 1984.

Debra L. Scott, Certified Shorthand Reporter.

UNITED STATES DISTRICT COURT

Office of the Clerk, District of Kansas, Topeka, Kansas, May 23, 1984.

Mr. Howard K. Phillips, Clerk, United States Court of Appeals, Tenth Circuit, C-404, U.S. Courthouse, Denver, Colorado, 80294.

Re: Civil No. 83-4388, Quinn vs State Farm Mutual Automobile Insurance Company, Your No. 84-1674.

Dear Mr. Phillips: We transmit to you herewith Volumes 1 & 2 of the record on appeal in the reference case.

Very truly yours, Arthur G. Johnson, Clerk, By Sharon L. Stark, Deputy Clerk. cc: Jack P. Quinn, Eugene B. Ralston.

RECORD ON APPEAL
UNITED STATES COURT OF APPEALS
TENTH CIRCUIT NO. 84-1674

Jack P. Quinn, Plaintiff-Appellant vs State Farm Mutual Automobile Insurance Company, Defendant -Appellee.

Appeal from the United States District Court for the District of Kansas, Volume 1. Record on appeal transmitted to United States Court of Appeals on May 23, 1984.

RECORD ON APPEAL
UNITED STATES COURT OF APPEALS
TENTH CIRCUIT NO. 84-1674

Jack P. Quinn, Plaintiff-Appellant vs State Farm Mutual Automobile Insurance Company, Defendant -Appellee.

Appeal from the United States District Court for the District of Kansas, Volume 1. Transcript of proceedings held on May 3, 1984, Pages 1 thru 11.

1083, 5/, 1983, No. 4388, 12-28-83, 4, 110, 1, 1, 4, Nearest $1,000: 16, Mag. No.: J8310 M83BA, 20149, Dem. P, 1983. No. 4388.

Jack P. Quinn, Plaintiff; State Farm Mutual Automobile Insurance Company also known as State

Farm Insurance Company, Defendant; Richard D. Rogers, Judge; Debbie Scott, Court Reporter.

Cause: Damage to property from a vehicle driven by person insured by the State Farm Mutual Automobile Insurance Co.

Attorneys: Pro Se, 908 Lincoln, Wamego, Kansas 66547; Eugene B. Ralston, Ralston & Frieden, 112 S.W. 6th, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266.

PROCEEDINGS

1983 PLTF: $60.00

Dec. 28, 1, COMPLAINT with demand for Jury Trial; Summons forwarded to Insurance Commissioner for Service.

Dec. 30, 2, RETURN of Service on Summons by Insurance Commissioner, served State Farm Mutual Automobile Insurance Company, 12/29/83 by U.S. Mail; RETURNABLE DATE: February 6, 1984.

1984

Jan. 26, 3, ANSWER.

Feb. 1, 4, Reply of Pltf.

Mar. 20, 5, MOTION of Deft State Farm Mutual Automobile Ins. Co. to Dismiss; 6, MEMO of Deft in Support of Motion to Dismiss

Apr. 4, 7, RESP of Pltf.

May 3, 8, AT-TOPEKA-ROGERS-J: Deft's motion to dismiss U/A. Court to issue Order; 9, ORDER-ENTERED-ROGERS-J: deft's motion to dismiss be granted. cc: to counsel; 10, JUDGMENT ON DECISION BY THE COURT-ENTERED-Clerk: deft's motion to dismiss be and is hereby granted. cc: to counsel; JS 6 made.

May 11, 11, PLAINTIFF'S NOTICE OF APPEAL USCA #84-1674 Pltf $70.00 cc to counsel and USCA

w/copies of docket entries.

May 17, 12, Designation of record on appeal; 13, Pltf's notice of transcript order—doe 6-1-84 cc to counsel and USCA

May 23, 14, Transcript of proceedings held on May 3, 1984; Original record on appeal transmitted to USCA cc to counsel.

U.S. District Court, District of Kansas, SS. I hereby certify the foregoing is a true copy of the original on file in this court and cause. Arthur G. Johnson, Clerk, By Sharon L. Stark, Deputy; Dated: 5-23-84.

CLERK'S CERTIFICATE

I, Arthur G. Johnson, Clerk of the United States District Court for the District of Kansas, do hereby certify the annexed and foregoing to be the original pleadings and transcript in civil action no. 83-4388 entitled Jack P. Quinn vs State Farm Mutual Automobile Insurance Company Volumes -2.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States District Court for the District of Kansas at my office in Topeka Kansas, this 23rd day of May 1984.

Arthur G. Johnson, Clerk, By: Sharon L. Stark, Deputy Clerk.

1083, 5/, 1983, No. 4388, 12-28-83, 4, 110, 1, 1, 4, Nearest $1,000: 16, Mag. No.: J8310 M83BA, 20149, Dem. P, 1983. No. 4388.

Jack P. Quinn, Plaintiff; State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant; Richard D. Rogers, Judge; Debbie Scott, Court Reporter.

Cause: Damage to property from a vehicle driven

by person insured by the State Farm Mutual Automobile Insurance Co.

Attorneys: Pro Se, 908 Lincoln, Wamego, Kansas 66547; Eugene B. Ralston, Ralston & Frieden, 112 S.W. 6th, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266.

PROCEEDINGS

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Apr. 4, 7, RESP of Pltf.

May 3, 8, AT-TOPEKA-ROGERS-J: Deft's motion to dismiss U/A. Court to issue Order; 9, ORDER-ENTERED-ROGERS-J: deft's motion to dismiss be granted. cc: to counsel; 10, JUDGMENT ON DECISION BY THE COURT-ENTERED-Clerk: deft's motion to dismiss be and is hereby granted. cc: to counsel; JS 6 made.

May 11, 11, PLAINTIFF'S NOTICE OF APPEAL USCA #84-1674 Pltf $70.00 cc to counsel and USCA w/copies of docket entries

May 17, 12, Designation of record on appeal; 13, Pltf's notice of transcript order—doe 6-1-84 cc to counsel and USCA

EXHIBIT A TO DOCKETING STATEMENT

1. Cite the statutory authority believed to confer jurisdiction on this court to hear the appeal. In multi-party or multi-issue cases, particular attention should be paid to Fed.R.Civ.P. 54(b). The Constitution of the United States of America states as follows: Section 2. Jurisdiction of United States Courts. The judicial power shall extend to all cases, in law and equity.

2. Specify the date of the judgment or order sought to be reviewed; the date of any order respecting a motion pursuant to Fed.R.Civ.P. 50(b), 52(b), or 59; and the date the notice of appeal or petition for review or enforcement was filed.

The date of the judgment or order sought to be reviewed was May 3, 1984, when the defendant's motion that subject matter jurisdiction is lacking here because diversity among the parties is not present pursuant to 28 U.S.C. 13 32 (c). The defendant's motion to dismiss be and is hereby granted by the United States District Judge Richard D. Rogers in the case hearing docket number 83-4388, case title: Jack P. Quinn, Plaintiff, versus State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant.

The notice of appeal for review was filed by Jack P. Quinn on May 11, 1984, in the United States District Court for the District of Kansas at 444 S.W. Quincy, Topeka, Kansas 66601.

3. Indicate whether oral argument is desired, and, if so, state the reasons why, in the parties' opinion, oral argument should be heart. (See Tenth Circuit Ruley 10(e).)

I, Jack P. Quinn, do not think oral argument would be necessary in this case.

4. List all related or prior appeals. If prior appeal,

give appropriate citation. If no related or prior appeals, so state.

There have been no prior appeals in this case docket number 84-1674, case title: Jack P. Quinn, Appellant, versus State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Appellee.

5. In order that the judges of this court may evaluate possible disqualification or recusal, set forth the names of any and all parties to the litigation which are not revealed by the caption on appeal. If any such parties are corporations, the names of parent or subsidiary corporations shall also be included. In addition, the names of attorneys not entering an appearnace in this court, shall also be listed. If not applicable, so state.

No other names or corporations other than the names revealed by the caption on appeal are the only company sought to be reviewed. The only attorneys that are involved in this case are the law offices of Ralston & Frieden, 112 S.W. 6th, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266. The law offices of Ralston & Frieden represent State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Appellee.

Dated May 28, 1984. Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
PRO SE DOCKETING STATEMENT

INSTRUCTIONS: Fully answer the following questions using the back side of this form if additional space is necessary. You must attach to this statement a copy of the following: (a) notice of ap-

peal; (b) judgment or order of trial court; (c) district court docket sheet; and (d) opinions or findings and conclusions of the trial court, if any. File the original of this statement plus attachments with the Clerk of the United States Court of Appeals for the Tenth Circuit, United States Courthouse, Denver, Colorado 80294. Serve a copy of this statement plus attachments on opposing counsel. Keep a copy for your records.

1. Your name, address and institution number: Jack P. Quinn, Pro Se, 908 Lincoln, Wamego, Kansas 66547.

2. Title and number of the district court case: Docket Number 83-4388, Case Title: Jack P. Quinn, Plaintiff, versus State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant.

3. Name of the district court and district judge: The United States District Court for the District of Kansas. District Judge Richard D. Rogers.

4. The dates on which the district court order and your notice of appeal were filed: District order for dismissal May 3, 1984. Notice of appeal was filed May 11, 1984.

5. Type of Action: civil action for damages.

6. State briefly the relief you asked for in the district court and the reasons why you are entitled to such relief: Jack P. Quinn ask for $1500.00 in actual damages and for $15000.00 in punitive damages. On January 4, 1983, a vehicle 1972 Ford pickup driven by a person by the name of Marvin D. Clark insured by the State Farm Mutual Automobile Insurance Company went off of Highway 24 and did property damage amount to $500.00, but the State Farm Mutual Automobile Insurance Company has refused to pay the $500.00 in damages instead they finally sent

me a check for $189.09 on March 17, 1983. I, Jack P. Quinn, immediately returned the check saying the total damages according to my estimate was $500.00 and not $189.09. I, Jack P. Quinn, also stated that the State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company had my permission to go on the property and repair all of the damages themselves. The State Farm Mutual Automobile Insurance Company also known as the State Farm Insurance Company refused to repair any of the damages. The result has been that Jack P. Quinn has been forced to cancel leases on the land because of the damages done by a 1972 Ford pickup driven by a person by the name of Marvin D. Clark and insured by the State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company. I, Jack P. Quinn, also ask the court that the insurance licenses for the State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company be revoked in every State of the United States of America for forever and the present policies now in force be terminated.

7. State briefly the reasons why you feel the decision of the district court should be reversed: I, Jack P. Quinn, feel that State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company should be forced into court and pay all the damages including punitive damages because of their unwillingness to accept their responsibility as an insurance company and immediately pay damages.

8. Did you have a hearing in the district court? Yes.

6/4/84, dg, Gregory A. Whittmore, Ralston & Frieden, 112 S.W. 6th, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266, Attorneys for Defendant.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Jack P. Quinn, Appellant, vs. State Farm Mutual Automobile Insurance Company, Appellee. Case No. 84-1674

Memorandum in support of motion to affirm or dismiss: Tenth Circuit Rule 9a(2) states: "The court will receive a motion to affirm the judgment sought to be reviewed on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to merit further agrument." State Farm states that the question of diversity jurisdiction on which the decision of this cause depends is so unsubstantial as to not merit further argument because the district court properly dismissed the plaintiff's complaint on the grounds that 28 U.S.C. § 1332(c) deprived it if diversity jurisdiction. Appellant Quinn brought a direct action against State Farm for harm done to his property by a State Farm insured, Marvin D. Clark. The insured, Marvin D. Clark, is a resident of the State of Kansas and was not joined as a defendant. 28 U.S.C. § 1332(c) provides that in such a case the defendant insurer, for diversity jurisdiction purposes, becomes a citizen of the state where its insured resides. The district court applied 28 U.S.C. § 1332(c) and held: "Here, both plaintiff and defendant's insured are residents of the State of Kansas. As a result, complete diversity among the parties does not exists and we must dismiss this action." *Quinn v. State Farm Mutual Automobile Insurance Company*, No. 83-4388, slip op. at 2 (D. Kan. May 3, 1984).

The question of whether the trial court properly

dismissed plaintiff's action for lack of diversity jurisdiction is clearly so unsubstantial as not to merit further agrument. To decide that question the trial court simply had to apply the rules set forth in § 1332(c) to the facts contained in the pleadings. Further argument will not change the fact that both the plaintiff and State Farm's insured, Marvin D. Clark, are residents of the State of Kansas. Mr. Quinn filed a direct action against State Farm for the alleged negligence of Marvin D. Clark. As a result, § 1332(c) made State Farm a resident of the state of its insured. That state is Kansas. There was no complete diversity of citizenship and the district court lacked jurisdiction under 28 U.S.C. § 1332(a). Wright, Miller & Cooper, *Federal Practice and Procedure:* Jurisdiction § 3629 (1975 and Cumm. Supp. 1982).

Additionally, appellant Quinn, in his docketing statement and exhibits, has failed to state any statutory authority which would confer jurisdiction on this court to hear the appeal. As a result, appellant Quinn's appeal may be properly dismissed under Tenth Circuit Rule 15.

Wherefore, by reason of the above and foregoing, appellee State Farm Mutual Automobile Insurance Company respectfully prays the court to affirm the judgment of the district court or, in the alternative, to dismiss this appeal.

Gregory A. Whittmore, Ralston & Frieden, 400 S.W. 8th, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing MEMORANDUM IN SUPPORT OF MOTION TO AFFIRM OR DISMISS was placed in the United States mail on the 6th day of June, 1984, addressed to: Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547.

Gregory A. Whittmore, Ralston & Frieden.

6/4/84, dg, Gregory A. Whittmore, Ralston & Frieden, 400 S.W. 8th—Suite 409, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266, Attorneys for Defendant.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Jack P. Quinn, Appellant, vs. State Farm Mutual Automobile Insurance Company, Appellee. Case No. 84-1674.

MOTION TO AFFIRM OR DISMISS: Comes now the appellee, State Farm Mutual Automobile Insurance Company (hereinafter referred to as "State Farm") pursuant to Tenth Circuit Rule 9(a) and hereby moves the court to affirm that the judgment of the district court dismissing plaintiff's actions for lack of diversity jurisdiction or, in the alternative, to dismiss this appeal for failure to state the proper statutory authority believed to confer jurisdiction on this court to hear the appeal. In support of its motion, State Farm shows the court that the diversity jurisdiction question on which the decision of the cause depends is so unsubstantial as to not merit further argument because the district court properly dismissed the plaintiff's complaint on the grounds that 28 U.S.C. § 1332(c) deprived it if diversity jurisdiction. Appellee further shows the court that the appellant has failed to state a statutory authority which would confer jurisdiction on this court to hear the appeal.

Wherefore, appellee State Farm Mutual Automobile Insurance Company respectfully prays the court to affirm the judgment of the trial court dismissing plaintiff's action for lack of diversity jurisdiction or, in the alternative, to dismiss appellant's

appeal. This motion is accompanied by a Memorandum in Support.

Gregory A. Whittmore, Ralston & Frieden, 400 S.W. 8th—Suite 409, P.O. Box 639, Topeka, Kansas 66601, (913) 232-7266.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing MOTION TO AFFIRM OR DISMISS was placed in the United States mail on the 6th day of June, 1984, addressed to: Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547.

Gregory A. Whittmore, Ralston & Frieden.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Jack P. Quinn, Appellant, vs. State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Appellee. No. 84-1674.

On January 4, 1983, a vehicle 1972 Ford pickup driven by a person by the name of Marvin D. Clark insured by the State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company went off of Highway 24 and did property damage amounting to $500.00 but the State Farm Mutual Automobile Insurance has refused to pay the $500.00 in damages instead they finally sent my a check for $189.09 on March 17, 1983. I, Jack P. Quinn, immediately returned the check to the State Farm Mutual Automobile Insurance Company saying the total damages according to my estimate was $500.00 and not $189.09. I, Jack P. Quinn, also stated that the State Farm Mutual Automobile Insurance Company had my permission to go on the property and repair all of the damages themselves. The State Farm Mutual Automobile Insurance Com-

pany refused to repair any of the damages. The result has been that Jack P. Quinn has been forced to cancel leases on the land because of the damages done by a 1972 Ford pickup driven by a person by the name of Marvin D. Clark and insured by the State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company.

After failing to reach a settlement with the State Farm Mutual Automobile Insurance Company on December 28, 1983, Jack P. Quinn filed a law suit in the United States District Court for the District of Kansas against the State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company. In the law suit filed in federal court, Jack P. Quinn ask for $1500.00 in actual damages and for $15000.00 in punitive damages. Jack P. Quinn also ask that the State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company have their license to sell insurance in any State in the United States of America revoked forever and that all present policies now in force be terminated. Jack P. Quinn requested a trial by jury.

On May 3, 1984, a hearing was held in the United District Court for the District of Kansas at room 401, 444 S.E. Quincy, Topeka, Kansas before the Honorable Richard D. Rogers. The attorney Gregory Whittmore representing the State Farm Mutual Automobile Insurance Company at the hearing pleaded that the case should be dismissed for lack of diversity jurisdiction. The attorney Gregory Whittmore also stated that Jack P. Quinn had filed suit in federal court against the State Farm Mutual Automobile Insurance Company and did not have Marvin D. Clark also named in the law suit for the damages done to Jack P. Quinn's property. The attorney Gregory Whittmore stated at the hearing that only the Com-

missioner of Insurance for the State of Kansas had the power to revoke the insurance licenses of the State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company. The attorney Gregory Whittmore also stated at the hearing that there is a State law in the State of Kansas that no one could sue an insurance company for punitive damages. On May 3, 1984, the Honorable Richard D. Rogers dismissed the case docket number 83-4388, Jack P. Quinn, Plaintiff, versus State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant because subject matter jurisdiction is lacking here because diversity among the parties is not present pursuant to 28 U.S.C. 1332(c).

The Constitution of the United States of America states as follows: Section 2. Jurisdiction of United States Courts. The judicial power shall extend to all cass, in law and equity.

Jack P. Quinn did not join Marvin D. Clark in the law suit filed in federal court because Marvin D. Clark was not in default in repairing the damages to Jack P. Quinn's property instead Marvin D. Clark's insurance carrier the State Farm Mutual Automobile Insurance Company is the one who is in default in repairing the damages done to the property of Jack P. Quinn.

Jack P. Quinn is asking in the law suit filed in federal court that the licenses for the State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company to sell insurance in any State in the United States of America be revoked forever and that all present policies now in force be terminated.

I, Jack P. Quinn, agree with the attorney Gregory Whittmore that the State of Kansas has a State law that no one can sue an insurance company for puni-

tive damages but that State law is unconstitutional and should immediately be repealed by the federal courts.

The Constitution of the United States of America states as follows: Amendment VII. Jury Trial In Civil Cases. In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article VI. General Provisions. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

Dated June 12, 1984.

Jack P. Quinn, Appellant, Pro Se; 908 Lincoln; Wamego, Kansas 66547.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Office of the Clerk, C404 United States Courthouse, Denver, Colorado 80294.

July 6, 1984, Mr. Gregory A. Whittmore, Ralston and Frieden, P.O. Box 639, Topeka, KS 66601. Re: Case No. 84-1674, Quinn vs. State Farm Mutual.

Dear Mr. Whittmore: The Court has today entered an order, in the captioned appeal, on the docket as follows: 7/6/84 "Ordered appellee's motion to affirm or dismiss is denied." Judge Seth (parties notified by mail)

Sincerely yours, Howard K. Phillips, Clerk, By

Robert L. Hoecker, Chief Deputy Clerk. afw. cc: Mr. Jack P. Quinn, 908 Lincoln, Wamego, KS 66547.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Jack P. Quinn, Appellant, vs. State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Appellee. No. 84-1674.

On May 3, 1984, 8:30 a.m., at Room 401, 444 S.E. Quincy, Topeka, Kansas in United States District Court for the District of Kansas before the Honorable Richard D. Rogers a Hearing was held on docket case No. 83-4388, Jack P. Quinn, Plaintiff, versus State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company.

The attorney Gregory Whittmore representing the State Farm Mutual Automobile Insurance Company at the hearing pleaded that the case should be dismissed for lack of diversity jurisdiction.

I, Jack P. Quinn, disagree with the attorney Gregory Whittmore on the grounds that there is diversity jurisdiction because the State Farm Mutual Automobile Insurance Company has its main offices in other States besides the State of Kansas and sells insurance in many other States in the United States of America in addition to the State of Kansas. The Constitution of the United States of America states as follows: Section 2. Jurisdiction of United States Courts. The judicial power shall extend to all cases, in law and equity.

So the Constitution of the United States of America clearly states that the Federal courts have jurisdiction in all cases in law and equity in the United States of America.

The attorney Gregory Whittmore also stated at

the hearing that Jack P. Quinn had filed suit in Federal Court against the State Farm Mutual Automobile Insurance Company and did not have Marvin D. Clark also named in the law suit for the damages done to the property of Jack P. Quinn.

I, Jack P. Quinn, did not include Marvin D. Clark in the law suit filed in Federal Court because Marvin D. Clark was not in default in paying damages done to the property of Jack P. Quinn. Marvin D. Clark had an insurance policy with the State Farm Mutual Automobile Insurance Company and the State Farm Mutual Automobile Insurance Company was the one that was in default in paying the damages done to the property of Jack P. Quinn. Jack P. Quinn had for almost a year tried to reach a fair settlement with the State Farm Mutual Automobile Insurance Company but the State Farm Mutual Automobile Insurance Company refused to reach a fair settlement.

The attorney Gregory Whittmore also stated at the hearing that only the Commissioner of Insurance for the State of Kansas had the power to revoke the insurance licenses of the State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company.

I, Jack P. Quinn, disagree with the attorney Gregory Whittmore in my opinion the Federal Courts do have the power to revoke the insurance licenses of the State Farm Mutual Automobile Insurance Company in every State in the United States of America if the State Farm Mutual Automobile Insurance Company has refused to honor their commitment to their client. Do not misunderstand Jack P. Quinn is not against all insurance companies but they must be good honest and trustworthy insurance companies that honor their commitment to their client.

The attorney Gregory Whittmore also stated at

the hearing that there is a State Law in the State of Kansas that no one can sue an insurance company for punitive damages.

I, Jack P. Quinn, agree with the attorney Gregory Whittmore that the State of Kansas does have a State Law that no one can sue an insurance company for punitive damages but that State Law in unconstitutional and should be repealed by the Federal Courts immediately. Forhaps this is the reason why the State Farm Mutual Automobile Insurance Company has refused to pay a fair settlement for the damages done to the property of Jack P. Quinn because there is a State Law in the State of Kansas that no one can sue an insurance company for punitive damages after all the insurance companies paid a large amount of money hiring lobbyists to bribe the State Legislators to pass this unconstitutional law.

The Honorable Richard D. Rogers dismissed the case docket No. 83-4388, Jack P. Quinn, Plaintiff, versus State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant, because subject matter jurisdiction is lacking here because diversity among the parties is not present pursuant to 28 U.S.C. 1332(c).

Dated August 1, 1984.

Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Office of the Clerk, C404 United States Courthouse, Denver, Colorado 80294.

July 26, 1984, Mr. Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547; Re: Case No. 84-1674, Quinn vs. State Farm Mutual Automobile Insurance Company.

Dear Mr. Quinn: This Court has today assigned the captioned case to Calendar C pursuant to Tenth Circuit Rule 10 as revised on March 12, 1980. From preliminary review, it appears that the case may be appropriate for disposition without oral argument.

The parties may simultaneously submit briefs, in memorandum form, in support of their respective positions. These memoranda may consist of a short statment explaining why the judgment of the district court should be reversed or affirmed, together with citation to relevant legal authorities.

The parties may also include in their memoranda a statement setting forth reasons why, in their opinion, oral argument should be heard. The parties' memoranda and the trial court record will be reviewed by a panel of three judges who will determine whether oral argument is needed. If the panel unanimously is of the opinion that oral argument is not needed, the case will be submitted for determination without oral argument.

An original and three copies of the memoranda should be filed within fifteen days from the date of this letter. These memoranda must be served on opposing parties at the time of filing and proof of service must be forwarded to the court. Formal briefs need not be filed until further notice from the court.

Sincerely, Howard K. Phillips, Clerk, By: Audrey F. Weigel, Deputy Clerk. afw. cc: Mr. Gregory A. Whittmore, Ralston and Frieden, P.O. Box 639, Topeka, KS 66601.

UNITES STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
No. 84-1764

Jack P. Quinn, Plaintiff-Appellant, vs. State Farm Mutual Automobile Insurance Company, Defendant -Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

BRIEF OF DEFENDANT-APPELLEE

Ralston & Frieden, 400 S.W. 8th—Suite 409, P.O. Box 639, Topeka, Kansas 66601. (913) 232-7266. Attorneys for Defendant-Appellee.

I. Issue Presented For Review. Whether the district court erred as a matter of law in dismissing the plaintiff's direct action against a liability insurer for lack of diversity jurisdiction pursuant to 28 U.S.C. §1332(c) where both the plaintiff and defendant's insured are citizens of the State of Kansas and the plaintiff did not join defendant's insured as a party defendant.

II. Statement Of The Case.

A. Nature of the Case. This is a direct action against a liability insurer for property damage resulting from a one vehicle automobile accident. Plaintiff and defendant's insured are both citizens of the State of Kansas. Plaintiff did not join defendant's insured as a party to this action. The district court dismissed plaintiff's action for lack of diversity jurisdiction on the grounds that 28 U.S.C. §1332(c) made defendant a citizen of Kansas, the state where its insured resides. Plaintiff appeals.

B. Statement of Facts. On or about January 4, 1983, a Ford pickup truck driven by Marvin D. Clark of Manhattan, Kansas, drove off U.S. Highway 24 near Wamego, Kansas, and went through a fence owned by plaintiff Jack P. Quinn. (R.O.A. Vol. I, p. 1, 7, 12.) At the time of the accident, Marvin D. Clark was insured against liability under an automobile insurance policy issued by defendant State Farm Mutual Automobile Insurance Company (hereinafter referred to as State Farm). (R.O.A. Vol. I, p. 1, 7,

12.) Following the accident, defendant State Farm investigated the damage to plaintiff Quinn's property, estimated the loss at One Hundred Eight-Nine Dollars and Nine Cents ($189.09), and issued a check in that amount. (R.O.A. Vo. 1, p. 7, 10.) Plaintiff refused to accept said amount, claiming that the damage was Five Hundred Dollars ($500.00). (R.O.A. Vol. I, p. 7, 10.) Defendant State Farm then contacted a local fence repairer in the area who determined that the offer made by defendant was fair and subsequently completed a bid for formal repairs. (R.O.A. Vol. I, p. 10.) Plaintiff refused to accept this offer. (R.O.A. Vol. I, P. 7, 10.)

On December 28, 1983, plaintiff filed suit in the United States District Court for the District of Kansas, claiming One Thousand Five Hundred Dollars ($1,500.00) in actual damages to his property and Fifteen Thousand Dollars ($15,000.00) in punitive damages and requesting cancellation of defendant's authority to transact business in Kansas and cancellation of all State Farm insurance policies in force. (R.O.A. Vol. I, p. 1.) Plaintiff Quinn did not name defendant State Farm's insured, Marvin D. Clark, as a party defendant to the action. (R.O.A. Vol. I, p. 1, 7.) Defendant answered, alleging lack of diversity jurisdiction. (R.O.A. Vol. I, p. 4.) On March 20, 1984, defendant State Farm filed a Motion to Dismiss, alleging lack of diversity jurisdiction, the amount in controversy did not exceed Ten Thousand Dollars ($10,000.00), failure to join an indispensable party, and lack of subject matter jurisdiction. (R.O.A. Vol. I, p. 16, 17, 22, 23, 24, & 25.)

On May 3, 1984, the district court sustained defendant's Motion to Dismiss and entered judgment for defendant. (R.O.A. Vol. I, p. 41, 43.) The district court held that it lacked subject matter jurisdiction

because diversity among the parties was not present pursuant to 28 U.S.C. §1332(c) because plaintiff, a Kansas citizen, brought a direct action against a liability insurer in which the insured, also a Kansas citizen, was not joined as a defendant. (R.O.A. Vol. I, p. 41, 42.)

Plaintiff appeals.

III. Argument and Authority. The District Court correctly dismissed the Plaintiff's direct action against State Farm for lack of diversity jurisdiction pursuant to 28 U.S.C. §1332(c) where both the Plaintiff and State Farm's insured are citizens of the State of Kansas and Plaintiff did not join State Farm's insured as a party.

The only issue for resolution before this court is whether the district court properly dismissed plaintiff's action for lack of jurisdiction. The merits of plaintiff's action cannot be considered. *Ironite Co. v. Guarantee Manufacturing Co.*, 64 F.2d 608 (8th Cir. 1933). Error will not be presumed on appeal. *Aetna Ins. Co. v. Rhodes*, 170 F.2d 111 (10th Cir. 1948). The judgment of the district court is presumed to be correct and must be overcome by an affirmative showing by the appellant that the judgment of the district court was clearly erroneous. 36 C.J.S. *Federal Courts* §297(23) (1960).

The federal courts are courts of limited jurisdiction. They are empowered to hear only those cases as are within the judicial power of the United States, as defined by Article 3, Section 2 of the United States Constitution, and have been entrusted to them by a jurisdictional grant by Congress. 13 Wright, Miller & Cooper, *Federal Practice and Procedure*: Jurisdiction §3522 (1975). A federal court is presumed to lack jurisdiction until it has been demonstrated that jurisdiction over the subject matter

exists. *Grace v. American Cent. Ins. Co.*, 109 U.S. 278 (1883). The jurisdiction to hear cases involving controversies between citizens of different states was first given to the federal courts by the Judiciary Act of 1789 (Act of Sept. 24, 1789, 1 Stat. 73) and appears in its present form at 28 U.S.C. §1332. Subsection (c) limits the extent of diversity jurisdiction by defining the corporate citizenship of liability insurers in direct actions where the insured is not joined as a party. It states:

> (c) For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which is has been incorporated and of the State where it has its principal place of business: *Provided further*, That in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party -defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business.

Id.

In the present case, the district court correctly held that diversity of citizenship was lacking because of Section 1332(c) and that it did not have subject matter jurisdiction. Plaintiff Quinn is a Kansas citizen. Defendant State Farm's insured, Marvin D. Clark, is also a Kansas citizen. Plaintiff Quinn brought a direct action against defendant State Farm for property damage allegedly caused by the negligence of State Farm's insured, Marvin D. Clark, but did not join him as a party defendant. Section 1332(c) establishes the citizenship of a liability in-

surer in a direct action where its insured is not joined as a party. Under Section 1332(c), defendant State Farm becomes a citizen of the state where its insured resides. *Id.* That state is Kansas. As a result, complete diversity among the parties does not exist and the district court lacked subject matter jurisdiction over plaintiff's action. *Hernandez v. Travelers Insurance Company*, 489 F.2d 721 (5th Cir.), *cert. denied*, 419 U.S. 844 (1974); *Ferrara v. Aetna Cas. and Sur.*, 436 F.Supp. 929 (W.D. Ark. 1977) *See also* 13 Wright, Miller & Cooper *Federal Practice and Procedure: Jurisdiction* §3629 (1975). The judgment of the district court dismissing plaintiff's action must be affirmed.

IV. Conclusion. Plaintiff brought a direct action against defendant State Farm but did not join its insured as a party defendant. Both the plaintiff and defendant State Farm's insured are citizens of the State of Kansas. Under 28 U.S.C. §1332(c), defendant State Farm becomes a citizen of the State of Kansas and complete diversity of citizenship did not exist. Therefore, the district court lacked subject matter jurisdiction over plaintiff's action and properly dismissed plaintiff's action. The judgment of the district court must be affirmed.

WHEREFORE, defendant State Farm Mutual Automobile Insurance Company respectfully prays the court to affirm the judgment of the district court.

/s/ Gregory A. Whittmore
Ralston & Frieden
400 Southwest Eighth Street, P.O. Box 639
Topeka, Kansas 66601 (913) 232-7266
Attorneys for Defendant-Appellee
State Farm Mutual Automobile Insurance
Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was placed in the United States mail on the 10th day of August, 1984, addressed to: Jack P. Quinn, 908 Lincoln, Wamego, KS 66547.

/s/ Gregory A. Whittmore
Ralston & Frieden

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
Docket No. 84-1674

Jack P. Quinn, Plaintiff-Appellant, vs. State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Jack P. Quinn, 908 Lincoln, Wamego, Kansas 66547, Pro Se For Plaintiff-Appellant.

Date Suit Was Filed In Federal Court: I, Jack P. Quinn, hereby, on December 28, 1983, file a Law Suit in Federal Court against State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Missouri-Kansas Office, 2000 I-70 Drive S.W., Columbia, Missouri 65217. I, Jack P. Quinn, am filing this Law Suit in Federal Court against State Farm Mutual Automobile Insurance Company on the grounds that on January 4, 1983, a vehicle 1972 Ford pickup driven a person by name of Marvin D. Clark insured by the State Farm Mutual Automobile Insurance Company went off of Highway 24 and did property damage amounting to $1500.00. I, Jack P. Quinn, am filing this Law Suit asking for $1500.00 in actual damages and for

$15000.00 in punitive damages. I, Jack P. Quinn, also am asking that the State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company have their license to sell insurance in any State in the United States revoked forever and that all present policies presently in force be terminated. I, Jack P. Quinn, request a trial by jury.

/s/ Jack P. Quinn
908 Lincoln
Wamego, Kansas 66547

Date Of Hearing: On May 3, 1984, 8:30 a.m., at Room 401, 444 S.E. Quincy, Topeka, Kansas in United States District Court for the District of Kansas before the Honorable Richard D. Rogers, a Hearing was held on docket case No. 83-4388, Jack P. Quinn, Plaintiff, versus State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant.

The attorney Gregory Whittmore representing the State Farm Mutual Automobile Insurance Company at the hearing pleaded that the case should be dismissed for lack of diversity jurisdiction.

The attorney Gregory Whittmore also stated at the hearing that Jack P. Quinn had filed Suit in Federal Court against the State Farm Mutual Automobile Insurance Company and did not have Marvin D. Clark also named in the law Suit for the damages done to the property owned by Jack P. Quinn.

The attorney Gregory Whittmore also stated at the hearing that only the Commissioner of Insurance for the State of Kansas had the power to revoke the insurance licenses of the State Farm Mutual Automobile Insurance Company also know as State Farm Insurance Company.

The attorney Gregory Whittmore also stated at

the hearing that there is a State Law in the State of Kansas that no one can sue an insurance company for punitive damages.

The Honorable Richard D. Rogers dismissed the case docket No. 83-4388, Jack P. Quinn, Plaintiff, versus State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant, because subject matter jurisdiction is lacking here because diversity among the parties is not present pursuant to 28 U.S.C. 1332(c).

Date Of Filing An Appeal: I, Jack P. Quinn, hereby, on May 11, 1984, file an appeal in the United States District Court for the District of Kansas appealing the Court's judgment on the dismissal of the case docket No. 83-4388, Jack P. Quinn, Plaintiff, versus State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant, to the United States Court of Appeals for the Tenth Circuit.

I, Jack P. Quinn, ask in my appeal to the United States Court of Appeals Tenth Circuit that the decision of the United States District Judge Richard D. Rogers to dismiss the case docket No. 83-4388, Jack P. Quinn, Plaintiff, versus State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company, Defendant, be reversed and that a trial by jury as requested by Jack P. Quinn be allowed to proceed as filed in the United States District Court for the District of Kansas.

/s/ Jack P. Quinn
908 Lincoln
Wamego, Kansas 66547

Events Before Case Was Filed In Federal Court: January 4, 1983, a vehicle 1972 Ford pickup driven by a person by the name of Marvin D. Clark went off

of Highway 24 and demolished a stretch of seven wire fence owned by Jack P. Quinn. After Jack P. Quinn found the stretch of seven wire fence that had been demolished. Jack P. Quinn went to the Pottawatomie County sheriff's office and got a photo copy of the accident report. The sheriff's report stated in writing that the 1972 Ford pickup driven by Marvin D. Clark was insured by State Farm Mutual Automobile Insurance Company also known as State Farm Insurance Company. Jack P. Quinn waited for about 30 days after the accident happened and received no word from State Farm Mutual Automobile Insurance Company. So in February, 1983, Jack P. Quinn drove to Manhattan, Kansas and went to several State Farm Mutual Automobile Insurance Company agents before Jack P. Quinn found the agent that had sold State Farm Mutual Automobile Insurance to Marvin D. Clark. Jack P. Quinn told the agent for State Farm Mutual Automobile Insurance Company that State Farm Mutual Automobile Insurance Company was responsible for damages done to property owned by Jack P. Quinn. The agent for State Farm Mutual Automobile Insurance Company replied that State Farm Mutual Automobile Insurance Company was not responsible for any damages done to property owned by Jack P. Quinn. Jack P. Quinn showed the agent the photo copy of the Pottawatomie County sheriff's report of the accident that happened January 4, 1983, and that the 1972 Ford pickup was insured by State Farm Mutual Automobile Insurance Company. The agent said that Jack P. Quinn would have to file a written damage claim report which Jack P. Quinn did at the agent's office. Jack P. Quinn waited another 30 days and no reply from State Farm Mutual Automobile Insurance Company so Jack P. Quinn

goes back to Manhattan, Kansas, to the agent representing State Farm Mutual Automobile Insurance Company. When Jack P. Quinn told the agent that I had received no word from State Farm Mutual Automobile Insurance Company, the agent immediately called Topeka, Kansas, by telephone the party in Topeka, Kansas, ask has Jack P. Quinn repaired the damages yet, the agent's reply was no Jack P. Quinn has not repaired the damages yet, so the party in Topeka, Kansas, claimed they had not yet received a written damage claim report. Finally on March 17, 1983, Jack P. Quinn received a check from State Farm Mutual Automobile Insurance Company in the amount of $189.09 as a complete settlement for the damages done to property owned by Jack P. Quinn by a 1972 Ford pickup driven by a person by the name of Marvin D. Clark. Jack P. Quinn immediately returned the check for $189.09 to State Farm Mutual Automobile Insurance Company stating that Jack P. Quinn had filed a claim for $500.00 in damages and not $189.09 in damages. Jack P. Quinn also stated that State Farm Mutual Automobile Insurance Company had Jack P. Quinn's permission to go on the property owned by Jack P. Quinn and repair all of the damages themselves. State Farm Mutual Automobile Insurance Company refused to repair any of the damages done by a 1972 Ford pickup driven by a person by the name of Marvin D. Clark and insured by State Farm Mutual Automobile Insurance Company.

Summary: I, Jack P. Quinn, disagree with the attorney Gregory Whittmore on the grounds that there is diversity jurisdiction because State Farm Mutual Automobile Insurance Company has it's main offices in other States besides the State of Kansas and sells insurance in many other States in the United States of America in addition to the

State of Kansas.

The Constitution of the United States of America states as follows:

Section 2. Jurisdiction Of United States Courts. The judicial power shall extend to all cases, in law and equity.

So the Constitution of the United States of America clearly states that the Federal Courts have jurisdiction in all cases in law and equity in the United States of America.

I, Jack P. Quinn, did not include Marvin D. Clark in the law Suit filed in Federal Court because Marvin D. Clark was not in default in paying damages done to the property owned by Jack P. Quinn. Marvin D. Clark had an insurance policy with State Farm Mutual Automobile Insurance Company and State Farm Mutual Automobile Insurance Company was the one that was in default in paying the damages done to the property owned by Jack P. Quinn. Jack P. Quinn had for almost a year tried to reach a fair settlement with State Farm Mutual Automobile Insurance Company but State Farm Mutual Automobile Insurance Company refused to reach a fair settlement.

I, Jack P. Quinn, disagree with the attorney Gregory Whittmore in my opinion the Federal Courts do have the power to revoke the insurance licenses of State Farm Mutual Automobile Insurance Company in every State in the United States of America if State Farm Mutual Automobile Insurance Company has refused to honor their commitment to their client. Do not misunderstand Jack P. Quinn is not against all insurance companies but they must be good honest and trustworthy insurance companies that honor their commitment to their client.

I, Jack P. Quinn, agree with the attorney Gregory Whittmore that the State of Kansas does have a

State Law that no one can sue an insurance company for punitive damages but that State Law is unconstitutional and should be repealed by the Federal Courts immediately. Forhaps this is the reason why State Farm Mutual Automobile Insurance Company has refused to pay a fair settlement for the damages done to the property owned by Jack P. Quinn because there is a State Law in the State of Kansas that no one can sue an insurance company for punitive damages after all the insurance companies paid a large amount of money hiring lobbyists to bribe the State Legislators to pass this unconstitutional law.

The following is taken from the brief of Gregory Whittmore to the United States Court of Appeals For The Tenth Circuit, page 2, as follows:

Defendant State Farm then contacted a local fence repairer in the area who determined that the offer made by defendant was fair and subsequently completed a bid for formal repairs (R.O.A. Vol. I, p. 10) Plaintiff refused to accept this offer. (R.O.A. Vol. I, p. 7, 10)

The above allegations are totally untrue Gregory Whittmore must be getting totally desperate to make such totally untrue statements.

Jack P. Quinn gave State Farm Mutual Automobile Insurance Company permission to go on his property and repair all of the damages themselves. State Farm Mutual Automobile Insurance Company refused to repair any of the damages.

What actually happened after Jack P. Quinn returned the check for $189.09 to State Farm Mutual Automobile Insurance Company was that State Farm Mutual Automobile Insurance Company send Jack P. Quinn a letter saying that a fence contractor said that State Farm Mutual Automobile Insurance Company's offer of $189.09 was a fair offer but did

not state that the contractor would repair the damages for $189.09, so Gregory Whittmore had better stick to the true facts of the case. Besides State Farm Mutual Automobile Insurance Company should negotiate with the fence contractor not Jack P. Quinn.

/s/ Jack P. Quinn
908 Lincoln
Wamego, Kansas 66547

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
No. 84-1674
(D.C. No. 83-4388)
(D. Kan.)

Jack P. Quinn, Plaintiff-Appellant, v. State Farm Mutual Automobile Insurance Company, a/k/a State Farm Insurance Company, Defendant-Appellee.

ORDER AND JUDGEMENT

Before Holloway, Chief Judge, Logal and Seymour, Circuit Judges.

In accordance with 10th Cir. R. 9(e) and Fed R. App. P. 34(a), this appeal came on for consideration on the briefs and record on appeal.

This is an appeal from an order of the district court dismissing a pro se complaint for lack of subject matter jurisdiction. Plaintiff, a resident of the State of Kansas, sued defendant for damages caused by the defendant's insured, also a resident of Kansas, who was not named as a defendant in the complaint.

Federal courts are courts of limited jurisdiction. Under 28 U.S.C. § 1332(c), there is no diversity jurisdiction on the facts of this case. *See* 10th Cir. R. 17(b).

For the reasons given by the district court, the

judgment of the United States District Court for the District of Kansas is AFFIRMED.

The mandate shall issue forthwith.

Howard K. Phillips, Clerk. By /s/ Robert L. Hoecker, Chief Deputy Clerk.

United States Court of Appeals, Tenth Circuit, Office of the Clerk, C404 United States Courthouse, Denver, Colorado 80294.

November 2, 1984.

Mr. Jack P. Quinn, 908 Lincoln, Wamego, KS 66547.

Re: No. 84-1674; Quinn v. State Farm Mutual Automobile Insurance Company, a/k/a State Farm Insurance Company.

Dear Mr. Quinn: Enclosed is a copy of the order and judgment of the court in the captioned cause.

Very truly yours, Howard K. Phillips, Clerk, By /s/ Robert L. Hoecker, Chief Deputy Clerk.

HKP:kmh. cc: Honorable Richard Rogers. Mr. Jack P. Quinn, 908 Lincoln, Wamego, KS 66547. Mr. Gregory A. Whittmore, Ralston and Freden, P.O. Box 639, Topeka, KS 66601.

United States Court of Appeals, Tenth Circuit, Office of the Clerk, C404 United States Courthouse, Denver, Colorado 80294.

November 2, 1984

Mr. Arthur Johnson, Clerk, United States District Court, Federal Building and Courthouse, 444 S.E. Quincy, Topeka, KS 66683.

Re: No. 84-1674; Quinn v. State Farm Mutual, etc., et al. (D.C. #83-4388)

Dear Mr. Johnson: Enclosed is a certified copy of an order and judgment entered in the captioned

cause. This judgment constitutes the mandate of this court. You will please file this mandate in the records of your court immediately upon receipt of it by direction of this court.

Also enclosed is a receipt for you to sign and return to this office. The original record on appeal will be forwarded to you at a later date.

Very truly yours, Howard K. Philips, Clerk, By /s/ Robert L. Hoecker, Chief Deputy Clerk.

HKP:kmh. cc: Mr. Jack P. Quinn, 908 Lincoln, Wamego, KS 66547. Mr. Gregory A. Whittmore, Ralston and Frieden, P.O. Box 639, Topeka, KS 66601.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
No. 84-1674
(D.C. No. 83-4388)
(D. Kan.)

Jack P. Quinn, Plaintiff-Appellant, v. State Farm Mutual Automobile Insurance Company, a/k/a State Farm Insurance Company, Defendant-Appellee.

ORDER AND JUDGMENT

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diction on the facts of this case. *See* 10th Cir. R. 17(b).

For the reasons given by the district court, the judgment of the United States District Court for the District of Kansas is AFFIRMED.

The mandate shall issue forthwith.

Howard K. Phillips, Clerk, By /s/ Robert L. Hoecker, Chief Deputy Clerk.

Office - Supreme Court, U.S.
FILED
FEB 19 1985
ALEXANDER L. STEVAS
CLERK

(2)

No. 84-1154

In the Supreme Court of the United States

October Term, 1984

JACK P. QUINN
Petitioner

v.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,
also known as
STATE FARM INSURANCE COMPANY
Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals For the Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

EUGENE B. RALSTON,
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I

CORPORATE PARTY'S AFFILIATIONS

Respondent State Farm Mutual Automobile Insurance Company's affiliates are State Farm Mutual Life Insurance Company, State Farm Fire and Casualty Company, State Farm General Insurance Company and State Farm Life Assurance Company. Respondent otherwise has no parent companies, subsidiaries (other than wholly-owned subsidiaries) or affiliates.

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No. 84-1154

In the Supreme Court of the United States

October Term, 1984

JACK P. QUINN,
Petitioner
v.
STATE FARM MUTUAL
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also known as
STATE FARM INSURANCE COMPANY
Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals For the Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

MEMORANDUM IN OPPOSITION

This is a controversy involving petitioner, a Kansas citizen, who brought a direct action against Respondent, the insuror of a Kansas citizen insured, in the Federal District Court for the District of Kansas. The insured was not named as a party to the action. Petitioner sought actual damages of $1,500.00 and punitive damages of $15,000.00. Petitioner also requested the District Court to revoke respondent's license to sell insurance in Kansas and to terminate all of respondent's insurance policies presently in

force. No federal question jurisdiction was stated in petitioner's complaint and therefore diversity of citizenship jurisdiction had to exist in order for the district court to have subject matter jurisdiction, under the circumstances of this case.

Respondent asserts the following grounds in opposition to the granting of the instant petition for writ of certiorari:

1. Subject matter jurisdiction was clearly lacking in the Federal District Court.

28 U.S.C. 1332(c) provides in relevant part,

> . . . That in any direct action against the insuror of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party defendant, such insuror shall be deemed a citizen of the state of which the insured is a citizen, as well as of any state by which the insuror has been incorporated and of the state where it has its principal place of business.

Petitioner did bring a direct action against respondent liability insuror, without joining the insured as a party defendant. And as such, respondent is deemed to be a citizen of the state of which the insured is a citizen. Therefore, diversity of citizenship is lacking because petitioner is a Kansas citizen and respondent is also deemed a Kansas citizen.

Congress can require such diversity of citizenship because Congress created the Federal District Courts

by statute and may accordingly limit the District Courts jurisdiction by statute. This line of reasoning has long been embedded in case law. *Sheldon v. Sill*, 8 How 441, (1850).

Petitioner has not asserted any conflicts of decisions among the Federal Court of Appeals, nor has petitioner asserted that his dismissal from Kansas Federal District Court is in conflict with any decisions of this Court. No Federal question is involved, and it is in fact well settled that a Federal District Court is a court of limited jurisdiction subject to the jurisdictional grants of Congress. Further, petitioner could have obtained a trial by jury by bringing an action in state court.

In short, petitioner was not unconstitutionally denied access to the Federal Courts because petitioner's claim was within the realm of proper congressional limitations on the jurisdiction of the federal district courts.

2. Petitioner's claim fails other subject matter jurisdiction requirements.

Petitioner's claim of $1,500.00 in actual damages and $15,000.00 in punitive damages fails to satisfy the $10,000.00 requirement of 28 U.S.C. 1332(a). In Kansas, to justify an award of punitive damages against the defendant, a plaintiff must show that defendant's conduct was malicious, vindictive, oppressive, fraudulent or willful and wanton disregard of the other's rights. *Modern Air Conditioning Inc., v Cinderella Homes, Inc.*, 226 Kan. 70, 596 P.2d 816

(1979). Petitioner's claim of punitive damages against respondent fails to satisfy the jurisdictional amount because petitioner failed to allege any conduct by respondent which would justify an award of punitive damages.

Additionally, the Kansas Federal District Court lacks jurisdiction to grant petitioner's requested relief of revoking respondent's license to sell insurance in Kansas and to terminate all insurance policies of respondent presently in force. The licensure and regulation of insurance companies is a matter reserved to the states by the Tenth Amendment to the United States Constitution. Licensure and regulation of insurance companies in Kansas is controlled by the Commissioner of Insurance pursuant to the Kansas Insurance Code, K.S.A. 40-101 *et seq.* The power to revoke respondent's license to sell insurance in Kansas is administrative and rests with the Commissioner of Insurance of the State of Kansas and not the Kansas Federal District Court.

As is readily apparent, the Kansas Federal District Court lacks subject matter jurisdiction for reasons of no federal question, lack of diversity of citizenship, failure of jurisdictional amount, and inability to grant requested relief.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully Submitted,

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